No. 14796

United States Court of Appeals

for the Ninth Circuit

H. S. ANDERSON, JR., Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

ETHEL H. ANDERSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

ROBERT W. ANDERSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

GLORIA S. ANDERSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

JOHN HARDY ANDERSON, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Transcript of Record

Appeals from the United States District Court for the Southern District of California, Central Division.

FILED

NOV - 1 1955

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-14-55

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ELLIS N. SLACK,
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Washington, D. C.

United States District Court, Southern District of California, Central Division

Civil Action No. 12044-HW

H. S. ANDERSON, JR.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR RECOVERY OF FEDERAL INCOME TAX AND INTEREST FOR THE CALENDAR YEAR 1943 AND/OR FOR THE CALENDAR YEAR 1944

Plaintiff complains of the Defendant and for cause of action alleges:

I.

This action arises under the Internal Revenue Laws of the United States and Particularly Section 23 of the Internal Revenue Code.

II.

The plaintiff is an individual residing at 737 Sarbonne Road, Bel-Air, Los Angeles 24, California, which is within the Sixth Collection District, State of California, and within the Southern Judicial District of California, Central Division.

III.

The defendant is a corporation sovereign and body politic. The taxes and interest for the recovery

of which this action is brought were paid to and collected by Harry C. Westover, who was, at the time of such payment and collection, the duly appointed, qualified and acting Collector of Internal Revenue in and for said Sixth Collection District of the State of California. Said Harry C. Westover is not in office as Collector of Internal Revenue at the time this action is commenced.

IV.

No action upon the claims herein referred to, other than as herein set forth, has been taken before the Congress or any of the departments of the United States or in any court; no assignment or transfer of said claims has been made; the plaintiff is entitled to the amount herein claimed from the defendant; and there is no just credit or off-set against said claims which is known to the plaintiff.

V.

Harold S. Anderson, Sr., died on December 27, 1941. Prior to and on the date of his death he was a member of a co-partnership consisting of himself and his son, H. S. Anderson, Jr., in which Harold S. Anderson, Sr., the decedent, owned a 75% interest and H. S. Anderson, Jr., owned a 25% interest. The business of said co-partnership consisted of subsistence contracting work (feeding and housing defense workers) and was conducted in the States of California and Nevada under the name of "H. S. Anderson." Prior to and on the date of his death said Harold S. Anderson, Sr., the decedent, was

also a member of a co-partnership consisting of himself and the Anderson sons, in which Harold S. Anderson, Sr., owned a 40% interest, Robert W. Anderson owned a 30% interest, John Hardy Anderson owned a 20% interest, and H. S. Anderson, Jr., owned a 10% interest. This co-partnership was engaged in similar activities within the territory of Alaska under the name of "Anderson Brothers Supply Company of Alaska." Controversies developed between some of the heirs of said Harold S. Anderson, Sr., and the surviving member and members of the co-partnerships heretofore referred to, which resulted in the execution of a settlement agreement dated December 11, 1942, which was approved by the Probate Court of the County of Los Angeles.

VI.

Under the terms of said settlement agreement, H. S. Anderson, Jr., as the surviving partner of the partnership known as "H. S. Anderson," agreed to pay into the Estate of H. S. Anderson, Sr., deceased, the sum of $75,000.00, representing the agreed fair market value at date of death of the decedent of his interest in said partnership, and to pay into the Estate further sums aggregating $60,565.80 as set forth therein. Under the terms of said settlement agreement H. S. Anderson, Jr., Robert W. Anderson and John Hardy Anderson, as the surviving partners of the partnership known as "Anderson Brothers Supply Company of Alaska," agreed to pay into the Estate of H. S. Anderson, Sr., deceased, the sum of $50,000.00, representing

the agreed fair market value at date of death of the decedent of his interest in said Alaska partnership.

VII.

On December 23, 1942, two limited partnerships were formed. One of them, known as "H. S. Anderson Co.," was comprised of H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson as general partners, and Ethel Hamilton Anderson and Gloria S. Anderson as limited partners. Ethel Hamilton Anderson contributed $7,500.00 to the limited partnership and became the owner of a 7.5% interest therein. Gloria S. Anderson contributed $3,750.00 and became the owner of a 3.75% interest. H. S. Anderson, Jr., acquired a 42.5% interest in the limited partnership, John Hardy Anderson a 25% interest, and Robert W. Anderson a 21.5% interest therein. In an agreement dated the same date, December 23, 1942, coincidentally with the execution of the foregoing certificate of limited partnership, the three general partners and the two limited partners agreed, among other things, that said limited partnership should carry on the business of the former partnership known as "H. S. Anderson," and assume all of the contracts, debts and obligations of said former partnership. The second limited partnership created on December 23, 1942, was known as "Anderson Brothers Supply Company of Alaska." Said limited partnership was composed of H. S. Anderson, Jr., with a 25% interest therein, John Hardy Anderson, with a 33⅓% interest therein, and Robert W. Anderson, with a

30% interest therein, as the three general partners; and Ethel Hamilton Anderson, who contributed $10,417.00 to the partnership and acquired an 8⅓% interest therein, and Gloria S. Anderson, who contributed $4,167.00 and acquired a 3⅓% interest therein, as the limited partners. In an agreement executed the same date, December 23, 1942, concidentally with the formation of said limited partnership, the general and limited partners agreed, among other things, that said limited partnership should carry on the business of the former partnership known as "Anderson Brothers Supply Company of Alaska," and assume all of the contracts, debts and obligations of said former partnership.

VIII.

Pursuant to the terms of the settlement agreement and said agreements executed on December 23, 1942, the limited partnership of "H. S. Anderson Co.," did pay into the Estate of H. S. Anderson, Sr., deceased, the total amount of $135,565.80, of which $58,082.52 was paid prior to the close of the calendar year 1942, and the balance of $77,483.28 was paid during the calendar year 1943; and the limited partnership of "Anderson Brothers Supply Company of Alaska" paid into the Estate of H. S. Anderson, Sr., deceased, the sum of $50,000.00, of which $25,000.00 was paid prior to the close of the calendar year 1942 and the balance of $25,000.00 was paid during the calendar year 1943. The amounts thus paid into the Estate by said limited partnerships were deducted on the

fiduciary returns filed by the respective partnerships for the years 1942 and 1943; and the individual income tax returns of the partners for the years 1942 and 1943 reflected their respective proportionate shares of said deductions.

IX.

The Commissioner of Internal Revenue determined that said payments were not deductible by the partnerships or by the respective individual partners thereof; and by virtue of said determination the partners paid to the Collector of Internal Revenue at Los Angeles, California, deficiencies in income tax for the year 1943, with interest thereon, as follows and on the following dates:

Partners	Deficiency Paid	Interest Paid	Date of Payment
H. S. Anderson, Jr.	$18,131.61	$3,179.40	March 19, 1947
Ethel H. Anderson	17,324.13	4,037.00	March 19, 1947
Robert W. Anderson	11,780.51	2,016.24	February 27, 1947
Gloria S. Anderson	9,801.01	1,677.44	February 27, 1947
John H. Anderson	30,733.04	5,259.98	February 26, 1947

X.

On December 28, 1948, each partner filed with said Collector of Internal Revenue a claim for refund of the deficiency paid by him or her in the respective amounts set forth above. A true and correct copy of said claim for refund filed by the plaintiff herein is attached hereto as "Exhibit A" and made a part of this complaint. By letter dated August 29, 1949, a true and complete copy of which is attached hereto as "Exhibit B" and made a part

hereof, the Commissioner of Internal Revenue advised the plaintiff by registered mail of the disallowance in full of said claim for refund.

XI.

On March 15, 1948, each partner filed with said Collector of Internal Revenue a claim for refund of the total income tax paid by him or her for the calendar year 1944, upon the ground that if the payments made by the said limited partnerships during the years 1942 and 1943, as heretofore in Paragraph VIII alleged, were not properly deductible for those years, they were in any event deductible by the limited partnerships and the partners thereof in 1944, when said limited partnerships were terminated and dissolved. Each of said limited partnerships was terminated and dissolved as of the close of business on December 31, 1943, by mutual consent and agreement of all the partners thereof, which was evidenced by their execution, in respect of each partnership, of a "Cancellation of Certificate of Limited Partnerships," dated June 30, 1944, and duly recorded. Income taxes paid on or before their due dates by the respective partners for the year 1944 were as follows:

Partners	1944 Income Taxes Paid
H. S. Anderson, Jr.	$3,920.20
Ethel H. Anderson	5,014.65
Robert W. Anderson	1,416.77
Gloria S. Anderson	2,039.92
John Hardy Anderson	4,184.41

These were the respective amounts of refunds claimed on the claims for refund filed on March 15, 1948, as aforesaid. Said claims also alleged that if the payments were deductible in 1944 not only would refunds in the above amounts be due, but each partner would be entitled to a carry-back loss, which would entitle him or her, in addition, to a refund of a portion of the deficiency paid for the year 1943, as hereinabove alleged. A true and correct copy of said claim for refund for the year 1944 filed by the plaintiff herein is attached hereto as "Exhibit C" and made a part of this complaint. By letter dated May 19, 1949, a true and complete copy of which is attached hereto as "Exhibit D" and made a part hereof, the Commissioner of Internal Revenue advised the plaintiff by registered mail of the disallowance in full of said claim for refund for the year 1944.

XII.

On the date of death of Harold S. Anderson, Sr., December 27, 1941, his interests in the physical assets of the two former partnerships known as "H. S. Anderson" and "Anderson Brothers Supply Company of Alaska" had an aggregate value not in excess of $20,291.32, as shown by the following combined balance sheets of said partnerships as at December 31, 1941:

H. S. Anderson
and
Anderson Supply Company of Alaska
As at December 31, 1941

	H. S. Anderson 75% Interest	Anderson Supply Co. of Alaska 40% Interest	Total
Assets:			
Cash in Banks	None	None	
Cash Funds	$ 3,420.05	$ 2,130.00	$ 5,550.05
Receivables	45,664.93	20,851.11	66,516.04
Inventories	51,187.82	29,482.71	80,670.53
Equipment & Warehouse After Depreciation	16,430.87	45,886.58	62,317.45
Deferred Charges	862.55	1,743.75	2,606.30
Sundry Stocks at Cost— Of Doubtful Value	14,500.00	3,008.00	17,508.00
Total Assets	$132,066.22	$103,102.15	$235,168.37
Liabilities:			
Bank Overdrafts	$ 22,252.67	$ 5,308.50	$ 27,561.17
Notes and Accounts Payable	132,972.18	360.00	133,332.18
Unredeemed Scrip	1,691.50	111.35	1,802.85
Total Liabilities	$156,916.35	$ 5,779.85	$162,696.20
Net Worth	($24,850.13)	$ 97,322.30	$ 72,472.17
Interest of H. S. Anderson, December	($18,637.60)	$ 38,928.92	$ 20,291.32

XIII.

The assets of substantial value for which the payments into the Estate of H. S. Anderson, Sr., deceased, were made by the two succeeding limited partnerships during the years 1942 and 1943, referred to in Paragraph VIII hereinabove, consisted of certain contracts which were being negotiated

at the time of the death of said Harold S. Anderson, Sr., the principal contract being one for the operation and maintenance of commissaries, subsistence facilities and housing accommodations for the employees of Basic Magnesium, Inc., at Roysen, Nevada, situated in the Nevada desert approximately 16 miles from Las Vegas. Other contracts were for the operation of commissaries at certain Army camps. Said contracts produced very substantial income during the years 1942 and 1943, and the payments made by the two limited partnerships into the Estate of H. S. Anderson, Sr., deceased, were made in recognition of the decedent's interest in said contracts and for the sole purpose of enabling the limited partners to receive their respective shares of the income produced as a result of said contracts. Said contracts were exhausted and the value thereof ceased to exist by the close of 1943.

XIV.

The payments made by the two limited partnerships during the years 1942 and 1943, in the amounts set forth above in Paragraph VIII, were expenses paid for the production or collection of income, or for the management, conservation or maintenance of property held for the production of income, within the meaning of Section 23(a)(2) of the Internal Revenue Code, and as such were properly deductible for purposes of the Federal income tax.

XV.

In the alternative, if said payments are properly to be capitalized, they should be amortized or depre-

ciated over the period of the useful life of the property acquired thereby, to-wit, the contracts, which had a useful life only during the years 1942 and 1943, and thus the total expenditures should be written off and allowed as deductions for income tax purposes during the years 1942 and 1943.

XVI.

In the further alternative, if said payments are properly to be capitalized and if amortization or depreciation deductions are not to be allowed, a loss deduction should be allowed for the year 1943, when the value of the contracts became exhausted, in the total amount of the 1942 and 1943 payments, upon the ground that an ordinary loss was sustained in a transaction entered into for profit.

XVII.

In the further alternative, a loss deduction in the same amount should be allowed for the year 1944. upon the cancellation and termination of said two limited partnerships, and a loss carry-back should be allowed from the year 1944.

XVIII.

As a result of all of the foregoing, the Commissioner's disallowance of the claimed deductions for 1942 and 1943 was erroneous and illegal; as a result thereof the plaintiff overpaid his Federal income tax for the year 1943 by the amount of the deficiency paid him on March 19, 1947 (to-wit, $18,131.61 plus interest in the sum of $3,179.40); said sum has not been refunded or credited to plaintiff; the whole

thereof, together with interest thereon as provided by law, is now due and owing to plaintiff; and the defendant has erroneously and illegally failed and refused to allow the plaintiff's claim for refund and to refund to plaintiff the said sum.

XIX.

In the alternative, the plaintiff overpaid his Federal income tax for the year 1944, by the amount of $3,920.20 and, due to the carry-back of a loss from 1944, he also overpaid his 1943 income tax liability by the amount of $6,177.67; said sums have not been refunded or credited to plaintiff; the whole thereof, together with interest thereon as provided by law, are now due and owing to plaintiff; and the defendant has erroneously and illegally failed and refused to allow the plaintiff's claims for refund and to refund to plaintiff the said sums.

Wherefore, plaintiff prays for judgment against the defendant in the sum of $21,311.01, plus interest thereon at the rate of 6 percent as provided by law, or, in the alternative, in the sums of $3,920.20 for 1944 and $6,177.67 for the year 1943, plus interest thereon at the rate of 6 per cent as provided by law, and for such other and further relief as the Court may deem just and proper in the premises.

Dated August 1, 1950.

MACKAY, McGREGOR, REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,

Attorneys for Plaintiff.

State of California,
County of Los Angeles—ss.

H. S. Anderson, Jr., being duly sworn, says that he is the plaintiff above-named; that he has read the said complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

/s/ H. S. ANDERSON, JR.

Subscribed and sworn to before me this 1st day of August, 1950.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires November 26, 1953.

EXHIBIT A

Claim

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

Form 843, Treasury Department, Internal revenue Service (Revised July 1947.)

The collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

Collector's Stamp (Date received): [Blank]

☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.

☐ Refund of Amount Paid for Stamps unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

State of California,
County of Los Angeles—ss.

Name of taxpayer or purchaser of stamps: H. S. Anderson, Jr.

Business address: .....

Residence: 737 Sarbonne Road Bel-Air, Los Angeles 24, California.

The deponent, being duly sworn acording to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Sixth California.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year): January 1, 1943 to December 31, 1943.
3. Character of assement or tax: Individual income tax and victory tax.
4. Amount of assessment, $50,371.20; dates of payment March 19, 1947. ($18,131.61)
5. Date stamps were purchased from the Government: .....

6. Amount to be refunded: $18,131.61*
7. Amount to be abated (not applicable to income, gift, or estate taxes): $.....
8. The time within which this claim may be legally filed expires, under section 322 of Internal Revenue Code on March 19, 1949.

The deponent verily believes that this claim should be allowed for the following reasons:

(See Statement Attached.)

/s/ H. S. ANDERSON, JR.

Subscribed and sworn to before me this 23rd day of November, 1948.

[Seal] /s/ EDWARD BOUMA, JR.,
Notary Public.

My commission expires June 1, 1951.

I. During the years 1942 and 1943 payments were made by the following partnerships pursuant to a contract dated December 11, 1942:

Partnerships	1942	1943	Total
H. S. Anderson Co.	$ 58,082.52	$ 77,483.28	$135,565.80
Anderson Brothers Supply Co. of Alaska	25,000.00	25,000.00	50,000.00
	$ 83,082.52	$102,483.28	$185,565.80

*Together with interest paid by the taxpayer in the sum of $3,179.40, plus interest from the date of overpayment as provided by law.

Such payments were deducted on the fiduciary returns of said partnerships for the respective years, but were disallowed as deductions by Examining Officer Ralph N. Brown, as per his reports dated December 26, 1946, communicated to the partnerships by letters dated April 29, 1947 (LA:R), which are incorporated herein by reference.

II. Said payments were allocated among the partners of said partnerships and their wives in accordance with their respective interests, and by virtue of such disallowances, and pursuant to reports of Examining Officer Ralph N. Brown dated December 26, 1946, communicated to the taxpayers by letters dated April 29, 1947 (LA:R), which likewise are incorporated herein by reference, the members of said partnerships and their wives paid deficiencies in income tax for the calander year 1943, plus interest thereon, as follows:

Taxpayers	Deficiency	Interest	Dates of Payment
H. S. Anderson, Jr.	$18,131.61	$3,179.40	March 19, 1947
Ethel H. Anderson	17,324.13	4,037.00	March 19, 1947
Robert W. Anderson ..	11,780.51	2,016.24	February 27, 1947
Gloria S. Anderson	9,801.01	1,677.44	February 27, 1947
John H. Anderson	30,733.04	5,259.98	February 26, 1947

III. The theory upon which said payments were disallowed as deductions was that by them a purchase was made of the interest in said partnerships of H. S. Anderson, deceased, or his estate. The only asset of any consequence owned by each of said partnerships at the date of death of said decedent was a contract, which was exhausted and the

value of which ceased to exist by the close of 1943. Furthermore, the partnership interests allegedly thus acquired were terminated and ceased to exist as of January 1, 1944.

IV. The partners and their wives file claims for refund upon the ground that, if the Examining Officer was correct in capitalizing said payments, the amounts thus capitalized should have been amortized or depreciated over the period of the useful life of the property acquired in exchange therefor, to-wit, the period from the death of the decedent to December 31, 1943, and thus the total expenditures should be written off as deductions during the years 1942 and 1943. A proper basis and method of amortization as between the year 1942 and 1943 is the amount actually expended during each year, upon the authority of Associated Patentees, Inc., 4 T.C. 979, in which the Commissioner has acquiesced, 1946-1. C.B. 1.

V. In the alternative, the amounts expended are allowable deductions as ordinary and necessary business expenses under section 23(a)(1) of the Internal Revenue Code, or as expenses for the production of collection of income or for the management, conservation, or maintenance of property held for the production of income, within the meaning of section 23(a)(2) of the Internal Revenue Code

IV. In the further alternative, a loss deduction should be allowed for the year 1943 (when the value

of the contracts became exhausted) in the total amount of the payments, upon the ground that an ordinary loss was sustained in a transaction entered into for profit.

VII. In the further alternative, a loss carry-back should be allowed from the year 1944, as per the claims for refund filed by these taxpayers for the year 1944 on March 15, 1948.

VIII. Claimant requests and demands such further or additional refund or refunds as may now or hereafter appear to be due him by reason of the foregoing or on acount of (a) any mistake in fact or in law made by himself or any officer, clerk or other employee of the United States Treasury Department in the preparation, amendment and/or adjustment of his said return, (b) any mistake in the payment and/or collection of the tax made by any person designated in subdivision (a) of this paragraph, (c) any erroneous or illegal requirement or regulation of any officer, clerk or other employee of the United States Treasury Department, (d) any repealed law, whether heretofore or hereafter repealed, (e) any unconstitutional law whether heretofore or hereafter declared unconstitutional, or (f) any other act or matter in connection with the said return, whether covered by the foregoing or not so covered.

This is to certify that the undersigned prepared the foregoing claim for refund and that the state-

ment of facts therein set forth is from information furnished by the taxpayer, which the undersigned believes to be true.

/s/ HUGH G. ARNOLD,
Representative of Taxpayer,
621 S. Spring St.,
Los Angeles 14, Calif.

EXHIBIT B

Letter of U. S. Treasury Department
Washington 25

Aug. 29, 1949.

Office of
Commissioner of Internal
Revenue.

Address reply to
Commissioner of Internal
Revenue.
And refer to IT:C1:CC:Rej.

Mr. H. S. Anderson, Jr.,
737 Sarbonne Road, Bel Air,
West Los Angeles 24, California.

Dear Mr. Anderson:

In re: Claim for refund of $18,131.61 for the year 1943.

In accordance with the provisions of section 3772 (a)(2) of the Internal Revenue Code, this notice of

disallowance in full of your claim or claims is hereby given by registered mail.

By direction of the Commissioner:

Very truly yours,

E. I. McLARNEY,
Deputy Commissioner.

EXHIBIT C

Claim

To Be Filed With the Collector Where Assessment Was Made Or Tax Paid

Form 843
Treasury Department
Internal Revenue Service
(Revised July 1947)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

Collectors Stamp (Date received): [Blank]

- ☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

State of California,
County of Los Angeles—ss.

Name of taxpayer or purchaser of stamps:
H. S. Anderson, Jr.,

Business address: .....

Residence: 737 Sarbonne Road, Bel Air, Los Angeles 24, California.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Sixth California.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from: January 1, 1944, to December 31, 1944.
3. Character of assessment or tax: Individual income tax.
4. Amount of assessment, $3,920.20; dates of payment March 15, 1945.
5. Date stamps were purchased from the Government: .....
6. Amount to be refunded: $3,920.20
7. Amount to be abated (not applicable to income, gift, or estate taxes): $.....
8. The time within this claim may be legally filed expires, under section 322(b) of Internal Revenue Code on March 15, 1948.

The deponent verily believes that this claim should be allowed for the following reasons:

(See Statement Attached.)

/s/ H. S. ANDERSON, JR.,
737 Sarbonne Rd. L. A., 24.

Subscribed and sworn to before me this 12th day of March, 1948.

[Seal] /s/ EDWARD BOUMA, JR.,
Notary Public.

My Commission Expires June 1, 1951.

I. During the years 1942 and 1943 payments were made by the following partnerships pursuant to a contract dated December 11, 1942:

Partnerships	1942	1943	Total
H. S. Anderson Co.	$ 58,082.52	$ 77,483.28	$135,565.80
Anderson Brothers Supply Co. of Alaska	25,000.00	25,000.00	50,000.00
	$ 83,082.52	$102,483.28	$185,565.80

Such payments were deducted on the fiduciary returns of said partnerships for the respective years, but were disallowed as deductions by Examining Officer Ralph N. Brown, as per his reports dated December 26, 1946, communicated to the partnerships by letters dated April 29, 1947 (LA:R), which are incorporated herein by reference.

II. Said payments were allocated among the partners of said partnerships and their wives in accordance with their respective interests and by virtue of such disallowances, and pursuant to reports of Examining Officer Ralph N. Brown dated December 26, 1946, communicated to the taxpayers by letters dated April 29, 1947 (LA:R), which likewise are incorporated herein by reference, the members of said partnerships and their wives paid de-

ficiencies in income tax for the calendar year 1943, plus interest thereon, as follows:

Taxpayers	Deficiencies	Interest	Dates of Payment
H. S. Anderson, Jr.	$18,131.61	$3,179.40	March 19, 1947
Ethel H. Anderson	17,324.13	4,037.00	March 19, 1947
Robert W. Anderson	11,780.51	2,016.24	February 27, 1947
Gloria S. Anderson	9,801.01	1,677.44	February 27, 1947
John H. Anderson	30,733.04	5,259.98	February 26, 1947

III. The theory upon which said payments were disallowed as deductions was that by them a purchase was made of the interest in said partnerships of H. S. Anderson, deceased, or his estate. The only asset of any consequence owned by said partnerships at the date of death of said decedent was a contract, which was exhausted and the value of which ceased to exist by the close of 1943. The partners and their wives intend to file claims for refund of taxes paid for 1942 and 1943 upon the ground that they are entitled to amortize said payments over the life of said contract or deduct the same as expenses or as a loss incurred in a transaction entered into for profit.

IV. The partners and their wives, however, respectively file these claims for 1944 to protect their rights upon the ground that in any event the partnership interests acquired from the decedent were terminated and ceased to exist as of January 1, 1944, upon the termination of said partnerships, and the amounts paid therefor became at that time a total loss deductible in full from taxable income, and/or the said contract became wholly worthless during

1944. On their returns for the year 1944 the partners and their wives failed to deduct their respective proportionate shares of said loss, and they therefore make claim for refund on account thereof. The allowance of such a deduction to each partner and his wife will result in a net operating loss, which the taxpayers are entitled to carry-back to 1942.

V. Claimant requests and demands such further or additional refund or refunds as may now or hereafter appear to be due him by reason of the foregoing or on account of (a) any mistake in fact or in law made by himself or any officer, clerk or other employee of the United States Treasury Department in the preparation, amendment and/or adjustment of his said return, (b) any mistake in the payment and/or collection of the tax made by any person designated in subdivision (a) of this paragraph, (c) any erroneous or illegal requirement or regulation of any officer, clerk or other employee of the United States Treasury Department, (d) any repealed law, whether heretofore or hereafter repealed, (e) any unconstitutional law whether heretofore or hereafter declared unconstitutional, or (f) any other act or matter in connection with the said return, whether covered by the foregoing or not so covered.

This is to certify that the undersigned prepared the foregoing claim for refund and that the statement of facts therein set forth is from information

furnished by the taxpayer, which the undersigned believes to be true.

/s/ HUGH G. ARNOLD,
Representative of Taxpayer,
621 S. Spring St.,
Los Angeles 14, Calif.

EXHIBIT D

Letter of
U. S. Treasury Department
Washington 25

May 19, 1949.

Office of
Commissioner of Internal
Revenue.

Address reply to
Commissioner or Internal
Revenue.
And refer to
IT:C1:CC:Rej.

H. S. Anderson, Jr.,
737 Sarbonne Road, Bel Air,
West Los Angeles 24, California.

In re: Claim for refund of $3,920.20 for the year 1944.

Dear Mr. Anderson:

In accordance with the provisions of section 3772 (a)(2) of the Internal Revenue Code, this notice of

disallowance in full of your claim or claims is hereby given by registered mail.

By direction of the Commissioner.

Very truly yours,

E. I. Mc LARNEY,
Deputy Commissioner.

[Endorsed]: Filed August 4, 1950.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant in the above-entitled action and in answer to plaintiff's complaint admits, denies, and alleges:

I.

Admits the allegations contained in Paragraphs I, II and III.

II.

Denies the allegations contained in paragraph IV of the complaint, except that defendant admits that no action upon the claims therein referred to, other than as set forth in the complaint, has been taken before the Congress or any of the Departments of the United States or in any court; and that no assignment or transfer of said claims has been made.

III.

Admits the allegations contained in paragraphs V and VI of the complaint, except that defendant denies that H. S. Anderson agreed to pay into the estate of H. S. Anderson, Sr., deceased, further

sums aggregating $60,565.80 as alleged in paragraph VI of the complaint.

IV.

For answer to the allegations contained in paragraph VII of the complaint, defendant avers that it is without sufficient information to form a belief as to the truth and accuracy of the allegations therein contained and therefore denies them.

V.

Denies the allegations contained in paragraph VIII of the complaint, except that defendant admits that the amounts therein mentioned as having been paid into the estate by said limited partnerships were deducted on the fiduciary returns filed by the respective partnerships for the years 1942 and 1943.

VI.

Admits the allegations contained in paragraph IX of the complaint, except that defendant denies that H. S. Anderson, Jr., paid interest of $3,179.40 on the deficiency of income tax for 1943 in the amount of $18,131.61, and that the deficiency in tax and interest thereon was paid on March 19, 1947, as alleged; and also denies that Ethel H. Anderson paid interest in the amount of $4,037.00 on the deficiency of 1943 income tax in the amount of $17,-324.13 and paid that deficiency and interest thereon on March 19, 1947, as alleged. Further answering the allegations contained in paragraph IX of the complaint, defendant avers that upon information and belief H. S. Anderson, Jr., paid interest on the

aforesaid deficiency of $18,131.61 in the amount of $3,103.24, and that payments on account of said deficiency and interest were made by H. S. Anderson, Jr., in the amounts and on the dates as follows: $5,000.00 on February 26, 1947; $15,332.59 on March 19, 1947; $902.32 on March 25, 1947; and $.06 by transfer to a January account; and that Ethel H. Anderson paid interest in the amount of $2,965.04 on the aforesaid deficiency of $17,324.13, and made payments on account of said deficiency and interest in the amounts and on the dates as follows: $5,000.00 on February 26, 1947, and $15,289.17 on that same date.

VII.

Admits the allegations contained in paragraph X of the complaint, but defendant denies each and every allegation of fact contained in the claim for refund, Exhibit A, referred to therein, not hereinbefore or hereinafter specifically admitted.

VIII.

For lack of sufficient information to form a belief as to the truth or accuracy of the allegations therein contained, defendant denies the allegations contained in paragraph XI of the complaint, except that defendant admits that each partner on March 15, 1948, filed a claim for refund of income tax paid by him or her for the calendar year 1944, and that Exhibit C, referred to in said paragraph of the complaint, is a true copy of the claim for refund filed by plaintiff, and that exhibit D is a true copy of the notice of rejection of said refund claim, but

defendant denies each and every allegation of fact contained in said refund claim not hereinbefore and hereinafter specifically admitted.

IX.

Denies each and every allegation contained in paragraphs XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX.

X.

Denies each and every allegation contained in the complaint not hereinbefore specifically admitted.

Wherefore, the defendant prays judgment against the plaintiff, dismissing the plaintiff's complaint with costs and disbursements expended by this defendant.

ERNEST A. TOLIN,
United States Attorney;

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistants United States Attorney;

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys, Bureau of Internal Revenue;

/s/ E. H. MITCHELL,
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 10, 1951.

[Title of District Court and Cause.]

INTERROGATORIES BY DEFENDANT

(Pursuant to Fed. R. Civ. P. Rule 33)

To: H. S. Anderson, Jr., Plaintiff:

The defendant, pursuant to Federal Rules Civil Procedure Rule 33, directs you to answer separately and fully in writing and under oath the following interrogatories within 15 days from the time these interrogatories are served upon you:

1. Did you and your father, Harold S. Anderson, Sr., ever enter into a written agreement of partnership for the carrying on of subsistence contracting work in the States of California or Nevada?

2. Were there ever any written letters or memoranda between you and your father regarding the conduct, terms, sharing of profits of a subsistence contracting business in the States of California or Nevada?

3. Are there any written letters or memoranda of agreement between you and your father now in existence for the carrying on of a partnership for subsistence contracting work in the States of California or Nevada?

4. Did you and your father have an oral partnership agreement for the purpose of carrying on subsistence contracting business in the States of California or Nevada?

5. If you had such an oral contract, as referred to in question 4 hereinabove, state when it was en-

tered into, who was present, and the place where made.

6. State the terms of said oral agreement, if any, and in particular, the following:

(a) The capital contributions of each partner to be made.

(b) The respective duties of each partner.

(c) The agreement as to sharing of profits between partners.

(d) The agreed duration of the partnership.

(e) The agreement as to division of partnership assets on dissolution, if any.

(f) Whether there were any provisions of the oral agreement as to the disposition of the partnership assets upon the termination of the partnership whether by death or other reasons.

(g) State any agreements between you and your father as to the interest of the estate of any partner in the earnings of the partnership.

7. Did the copartnership H. S. Anderson also known as H. S. Anderson Co., between yourself and your father file a certificate of fictitious firm name in the State of California?

8. Did the copartnership H. S. Anderson also known as H. S. Anderson Co., between yourself and your father file a certificate of fictitious firm name in the State of Nevada?

9. Did said copartnership between yourself and your father enter into written contracts for the carrying on of subsistence contracting work during the years 1938, 1939, 1940 or 1941?

10. If it did enter into any written contracts, as

asked under the previous question, state the names and addresses of the companies or corporations with whom the copartnership entered into contracts.

11. Did said copartnership between yourself and your father enter into oral contracts with any companies, corporations or individual proprietorships during the years 1938, 1939, 1940 or 1941 for the carrying on of subsistence contracting business in the States of California or Nevada?

12. If your answer to the previous question is "yes," state the names of the companies, corporations or individual proprietorships with which such oral contracts were made.

13. Did John Hardy Anderson contribute any money, real property, securities, or any other personal property to the partnership formed September 23, 1942, known as H. S. Anderson Co.?

14. Did Robert W. Anderson contribute any money, real property, securities, or any other personal property to the partnership formed September 23, 1942, known as H. S. Anderson Co.?

15. If the answer to either questions 13 or 14 is "yes," state the details of the contributions to the partnership by each partner.

16. Who was the attorney, or who were the attorneys, of the administrator of the Estate of H. S. Anderson, Deceased?

17. Which attorney, or attorneys, represented you, as alleged surviving partner of the partnership known as H. S. Anderson Co., in arriving at the settlement agreement alleged in paragraph VI of the complaint?

18. With which persons did you ever negotiate subsistence contracting agreements in the States of California and Nevada prior to the death of your father?

19. With which persons did you ever negotiate subsistence contracting agreements in the State of California and Nevada after the death of your father to December 23, 1942?

20. With respect to the persons, if any, you have named in your answers to questions 17, 18 and 19, state their respective names and addresses and that of their employers.

21. Were any balance sheets of H. S. Anderson, also known as H. S. Anderson Co., as of December 27, 1941, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

22. Were any balance sheets of H. S. Anderson, also known as H. S. Anderson Co., as of December 31, 1941, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

23. Were any balance sheets of H. S. Anderson, also known as H. S. Anderson Co., as of December 21, 1942, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

24. Were any balance sheets of H. S. Anderson, also known as H. S. Anderson Co., as of December 31, 1942, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

25. Were any balance sheets of Anderson Bros. Supply Co. of Alaska, as of December 27, 1941, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

26. Were any balance sheets of Anderson Bros. Supply Co. of Alaska, as of December 31, 1941, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

27. Were any balance sheets of Anderson Bros. Supply Co. of Alaska, as of December 21, 1942, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

28. Were any balance sheets of Anderson Bros. Supply Co. of Alaska, as of December 31, 1942, ever prepared by your accountants, by accountants for the firm of H. S. Anderson Co., or by accountants for the Estate of H. S. Anderson?

29. If your answer to any of the questions, 21 through 28, was "yes," state in each instance by whom the balance sheets were prepared.

30. If your answer to any of the questions, 21 through 28, was "yes," state for whom each balance sheet was prepared.

31. When, and from whom, did H. S. Anderson, Sr., acquire Lots 65 and 66 in the Industrial Center Tract in the County of Los Angeles, State of California, as per map recorded in Book 12, Page 101 of maps, in the office of the County Recorder of said county?

32. What consideration was paid for said Lots 65 and 66?

33. How many shares of Douglas Oil and Refining Corp. stock stood in the name of H. S. Anderson at the date of his death?

34. When, and from whom, did H. S. Anderson, Sr., acquire said shares of Douglas Oil and Refining Corp. stock?

35. What consideration was paid for the said shares of Douglas Oil and Refining Corp. stock?

36. What is the legal description of a certain oil lease in Ventura County referred to in paragraph 22 of the Agreement dated December 11, 1942?

37. When, and from whom, was said oil lease, described in paragraph 22 of said Agreement of December 11, 1942, acquired?

38. What consideration was paid for said oil lease in Ventura County?

39. How many shares of Puett Starting Gate Co. stock were held by H. S. Anderson at the date of his death?

40. When, and from whom, were the said shares of Puett Starting Gate Co. Stock acquired?

41. What consideration was paid for the said shares of Puett Starting Gate Co. stock?

42. Were there separate books and records kept for the Anderson Bros. Supply Co. of Nevada apart from the H. S. Anderson Co. books and records?

43. Did you, as surviving partner of H. S. Anderson Co., contribute any assets of that business to the new limited partnership of H. S. Anderson Co., formed December 23, 1942?

44. If your answer to question 43 is "yes," list all the assets you contributed and their book value as shown on the books of the new limited partnership.

45. Were any written agreements of dissolution of the limited partnership of H. S. Anderson Co. entered into besides that cancellation of certificate dated June 30, 1944?

46. If your answer to question 45 is "yes," set forth the titles of the various agreements or memoranda entered into, the dates of execution and the parties who executed said agreements and memoranda.

47. Did the partners in the partnership known as Anderson Bros. Supply Co. of Nevada ever enter into a written Articles of Partnership?

48. When was the partnership known as the "Anderson Bros. Supply Co. of Nevada" formed?

49. When did the partnership known as the "Anderson Bros. Supply Co. of Nevada" commence doing business?

50. Did the partnership known as the Anderson Bros. Supply Co. of Nevada ever cease doing business?

51. If your answer to question 50 is "yes," when did it cease doing business?

52. Was the partnership referred to as Anderson Bros. Supply Co. of Nevada ever dissolved?

53. If your answer to question 52 is "yes," when was it dissolved?

54. Did the partners in the partnership know as Anderson Bros. Supply Co. of Nevada ever enter into a written Articles of Dissolution?

55. State in detail what taxes covering what property are represented by the deduction of $4,203.63 shown under the item, "Property, personal and real estate" in "Taxes, Schedule C" of the partnership return of income for H. S. Anderson Co. for the year 1944.

56. Did you, as a partner in the firm of Ander-Bros. Supply Co. of Nevada, file, or cause to be filed, with the Collector of Internal Revenue in either California or Nevada one or more United States Partnership Returns of income, Form 1065, for any part of the years 1941, 1942, 1943 or 1944?

57. If your answer to question 56 was "yes," with whom were they filed and for what periods?

58. Were you the only administrator of the Estate of H. S. Anderson, deceased, Los Angeles Superior Court No. 210180?

59. What is the address of the McNeill Construction Co.?

60. With whom, if anyone, in the McNeill Construction Co. did you negotiate subsistence contracts?

61. What disposition did you make of Lots 65 and 66 in the Industrial Center Tract in the County of Los Angeles, State of California, as per map recorded in Book 12, page 101 of Maps, in the office of the County Recorder of said County? (Give details, to whom sold, or conveyed, price, date, recordation of deeds.)

62. What disposition did you make of the shares of Douglas Oil and Refining Corp. stock which stood in the name of H. S. Anderson at the date of

his death? (Give details, to whom sold or given, amounts realized, dates of disposition.)

63. What disposition did you make of the shares of Puett Starting Gate Co. stock held by H. S. Anderson at the date of his death? (Give details, to whom sold or given, amounts realized, dates of disposition.)

64. What disposition did you make of the oil lease in Ventura County which stood in the name of H. S. Anderson at the date of his death? (Give details, dates of conveyance, to whom granted, assigned, etc., recordation data, amounts realized, dates of transactions.)

65. In whose custody are the books and records of the Anderson Bros. Supply Co., of Nevada?

66. In whose custody are the books and records of the copartnership known as H. S. Anderson, also known as H. S. Anderson Co.?

67. In whose custody are the books and records of the limited partnership known as the H. S. Anderson Co. covering the period December 23, 1942 to June 30, 1944?

68. In whose custody are the books and records of the Anderson Bros. Supply Co. of Alaska?

69. In whose custody are the boks and records of the partnerships which succeeded those limited partnerships known as H. S. Anderson Co. and Anderson Bros. Supply Co. of Alaska?

70. What are the names of the Copartnerships which succeeded the limited partnerships known as the Anderson Bros. Supply Co. of Alaska and H. S. Anderson Co.?

71. Who were the partners in the partnership known as "Anderson Bros. Supply Co. of Nevada"?

72. What capital contributions did the partners in Anderson Bros. Supply Co. of Nevada make to that partnership?

73. What share of the earnings was each of the partners in Anderson Bros. Supply Co. of Nevada entitled to?

74. Was there an agreement among the partners in Anderson Bros. Supply Co. of Nevada as to the rights of the various partners in the assets of that partnership upon the dissolution of that partnership?

Dated: This 13th day of December, 1951.

WALTER S. BINNS,
United States Attorney;

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistants United States Attorney;

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys, Bureau of Internal Revenue;

/s/ EDWARD R. McHALE,
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 13, 1951.

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES

Answer of plaintiff, H. S. Anderson, Jr., to interrogatories served on him by defendant on December 14, 1951:

1. No.

2. To the best of my knowledge and belief there were no such written letters or memoranda. However, the financial statements of the partnership, the partnership returns filed and accepted, and the agreement dated December 11, 1942, establish the existence of the partnership.

3. Same answer as No. 2.

4. Yes.

5. Said oral partnership agreement was entered into approximately January 1938, at 737 Sarbonne Road, Los Angeles 24, California, and there were present H. S. Anderson, Sr., H. S. Anderson Jr., Robert W. Anderson and John H. Anderson.

6.(a) My father was to contribute the assets then invested in the business. I was to contribute services.

(b) The duties of each partner were similar. I was the chief accountant for the business and also spent more time in the field as Field Supervisor than did my father.

(c) The profits were to be shared 75% to my father and 25% to me.

(d) It was understood that the partnership would be permanent.

(e) It was understood that the division of assets would be according to our interests in the profits.

(f) There was no agreement specifically regarding sale or other disposition of assets.

(g) There was no agreement with respect to the interest of an estate in the partnership.

7. To the best of my knowledge it did not.

8. To the best of my knowledge it did not.

9. Yes.

10. McDonald and Kahn, General Contractors, Financial Center Building, San Francisco, California; San Francisco Women's Clubhouse Association; San Francisco, California (for work at the San Francisco Fair, under the name of Van Catering); California Shipbuilding Corporation, Terminal Island, California; Camp San Luis Obispo Post Exchange, San Luis Obispo, California; Camp Roberts Post Exchange, Camp Roberts, California; Basic Magnesium, Inc. (Defense Plant Corporation), Las Vegas, Nevada; Hollywood Turf Club, Inglewood, California; Senator Coffee Shop, Senator Hotel, Carson City, Nevada.

11. Yes.

12. Douglas Aircraft Co., Long Beach, California.

13. I assume the partnership referred to in this question is the one created on December 23, 1942. The answer to the question on this assumption is "yes."

14. Same answer as No. 13.

15. During 1940 John Hardy Anderson and Robert W. Anderson advanced to the California

partnership the sums of $7,196.32 and $10,794.48, respectively, out of their profits from the Alaska partnership. During 1941 they similarly advanced to the California partnership the sums of $12,000.00 and $18,000.00, respectively. After deducting repayments of $95.25 and $1,325.00 and income tax payments for their accounts in the sums of $437.84 and $531.37, they had net advances in the California partnership at December 31, 1941, in the sums of $18,663.23 and $26,938.11, respectively. These funds remained invested in the business of the California partnership and were credited to the capital accounts of John Hardy Anderson and Robert W. Anderson on the books of the new limited California partnership created December 23, 1942.

In addition, the business of the former California partnership in effect was conducted by me as surviving partner and the estate during the period from December 27, 1941, to December 11, 1942; and the estate's 75% share of net profits for said period was $228,369.32, which profits were paid into the estate and distributed to the heirs before the close of 1942, as set forth in the agreement dated December 11, 1942. The sum of $38,061.55 was thus distributed to each of John Hardy Anderson and Robert W. Anderson, representing his respective one-sixth interest as an heir in said net income; he reported said sum as income taxable to him as a distributee of the estate; and this sum was invested by each of them in the new limited California partnership created December 23, 1942.

16. Victor Ford Collins.

17. Victor Ford Collins and A. Calder Mackay.

18. Jointly with my father I negotiated for subsistence contracting agreements with various officers at Camp San Luis Obispo Post Exchange (among them, a Major Stone) and at Camp Roberts Post Exchange; and with Howard Mann, General Manager for McNeil Construction Company, at Las Vegas, Nevada (Basic Magnesium, Inc., job).

19. Howard Mann, General Manager for McNeil Construction Company; Louis Bean, Defense Plant Corporation, Las Vegas, Nevada; the plant manager of Douglas Aircraft Company, Long Beach, California; William Waste, project manager, California Shipbuilding Corporation, Terminal Island, California.

20. The information requested in this question is given in answers No. 18 and No. 19.

21. No.

22. Yes.

23. No.

24. Yes.

25. No.

26. Yes.

27. No.

28. Yes.

29. The balance sheets referred to in No. 22 and No. 24 were prepared by Hugh G. Arnold, 5410 Wilshire Boulevard, Los Angeles 36, California; and those referred to in No. 26 and No. 28 were prepared by Alfred F. Ohl.

30. Said balance sheets were prepared for the respective partnerships.

31. Said property was acquired, to the best of my knowledge, in 1937 from Pacific Provision Company.

32. To the best of my knowledge, the consideration for said property was cost through foreclosure in the sum of $5,071.70.

33. 2,812 shares.

34. To the best of my knowledge, said shares were acquired on July 14, 1941, from George W. Stratton.

35. To the best of my knowledge, $5,000.00, or $1.778 per share.

36. The southeast quarter of the southwest quarter and Lot 6 of Section 14, Township 3 North, Range 23 West, San Bernardino Base and Meridian.

37. By assignment dated May 6, 1938, from Bill Davis.

38. To the best of my knowledge, $10.00.

39. 20 shares.

40. To the best of my knowledge, said shares were acquired from the Puett Starting Gate Co. upon original issuance in 1939.

41. To the best of my knowledge, $2,000.00.

42. The Anderson Bros. Supply Co. of Nevada was merely a branch or division of H. S. Anderson Co. A separate set of books was maintained for the Nevada job.

43. Yes.

44. I contributed my interest in the following assets, subject to the following liabilities and reserves, as shown on the books of the new limited partnership:

Cash	$ 21,742.59
Accounts Receivable	68,308.95
Inventories	167,001.63
Deferred Charges	67,463.38
Advances to other partnerships	79,601.39
Inter-Job Accounts	12,618.77
Equipment (net after depreciation)	228,857.38
Investments (cost)	12,071.70
Total	$657,665.79
Liabilities and Reserves	$557,665.79

45. No.

46. Not applicable.

47. The Anderson Bros. Supply Co. of Nevada was not a separate partnership, but was merely a special trade name under which the Nevada job was conducted by H. S. Anderson Co. Hence there were no written Articles of Partnership, except those forming the California Partnership.

48. The Anderson Bros. Supply Co. of Nevada was not a separate partnership.

49. Negotiations which culminated in the business carried on under the name of Anderson Bros. Supply Co. of Nevada were commenced in 1941.

50. The Anderson Bros. Supply Co. of Nevada was not a separate partnership; but as a job of the California limited partnership created December 23, 1942, it ceased doing business when the latter partnership ceased doing business, as of December 31, 1943.

51. This question is answered in No. 50 above.

52. Anderson Bros. Supply Co. of Nevada, since it never existed as a separate partnership, was never dissolved as such.

53. It was dissolved as part of H. S. Anderson Co. in 1944, as of December 31, 1943.

54. Only as part of the dissolution of H. S. Anderson Co.

55. These taxes consisted of:

Basic Magnesium Project, Clark County Nevada, real and personal property	$1,781.67
L. A. Warehouse, 1281 East Sixth Street, real and personal property	2,421.96
	$4,203.63

56. No, inasmuch as the Anderson Bros. Supply Co. of Nevada was not a separate partnership. Its income was part of the income of H. S. Anderson Co., returns for which were filed with the Collector at Los Angeles.

57. Not applicable.

58. Yes.

59. 5860 Avalon Boulevard, Los Angeles, California.

60. Howard Mann.

61. Said lots were sold through Title Insurance & Trust Co., escrow No. 2584537, dated March 21, 1947, to N. E. Rubinoff Ace Egg Products Co., for $51,750.00.

62. The Douglas Oil and Refining Corp. was liquidated, commencing in the early spring of 1943, to the best of my knowledge, with the final liquidat-

ing distribution being received at the end of 1945 or beginning of 1946. To the best of my knowledge, three liquidating distributions were received during 1944 and 1945 on the 2,812 shares, aggregating $2,443.63, as follows:

On or about November 21, 1944.....	$1,687.20
On or about May 2, 1945.....	562.40
On or about December 27, 1945.....	194.03
	$2,443.63

63. The Puett Starting Gate Co. stock was distributed to the members of the then partnership on or about November 30, 1947.

64. The oil lease was quit-claimed without consideration, to the best of my knowledge during 1943.

65. Robert H. Lovelock, c/o H. S. Anderson Co.

66. Same as No. 65.

67. Same as No. 65.

68. Same as No. 65.

69. Same as No. 65.

70. The same names, respectively, but different partners.

71. There was no partnership known as "Anderson Bros. Supply Co. of Nevada." That was a separate job operated by the California partnership.

72. Their contributions as partners of the California partnership.

73. Anderson Bros. Supply Co. of Nevada was merely a job account of H. S. Anderson Co.

74. The Anderson Bros. Supply Co. of Nevada was not a separate partnership. Dissolution was

governed by the provisions of the H. S. Anderson Co. Articles of Copartnership.

Dated March 10, 1952.

/s/ H. S. ANDERSON, JR.

Subscribed and sworn to before me this 10th day of March, 1952.

[Seal] /s/ MARY E. WHITTHORNE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires November 26, 1953.

[Endorsed]: Filed March 10, 1952.

[Title of Court.]

MINUTES OF THE COURT

Sept. 14, 1953

H. S. Anderson, Jr. vs U.S.A. No. 12,044-C Civil
Ethel H. Anderson vs U.S.A. No. 12,045-C "
Robert W. Anderson vs U.S.A. No. 12,046-C "
Gloria S. Anderson vs U.S.A. No. 12,047-C "
John Hardy Anderson vs U.S.A. No. 12,048-C "
(Same Order in Each Case)

Present: Hon. James M. Carter, District Judge.
Counsel for plaintiff: no appearance;
Counsel for defendant: Edw. H. McHale, Ass't U. S. Att'y.

Proceedings: For setting.

It Is Ordered that causes are set for futher Consolidated pretrial hearing at 2 PM, Dec. 21, 1953, and set for Consolidated trial Jan. 26, 1954, 10 AM.

EDMUND L. SMITH,
Clerk,

By L. B. FIGG,
Deputy Clerk.

[Title of District Court and Causes.]

STIPULATION OF FACTS

1. Harold S. Anderson, Sr., died intestate on December 27, 1941. Prior to and on the date of his death he was a member of a co-partnership (hereinafter referred to as the California partnership) consisting of himself and his son, H. S. Anderson, Jr., in which Harold S. Anderson, Sr., the decedent, owned a 75% interest and H. S. Anderson, Jr., owned a 25% interest. The business of said co-partnership consisted of subsistence contracting work (feeding and housing defense workers) and was conducted in the States of California and Nevada under the name of "H. S. Anderson." The California partnership was organized on January 1, 1938 by virtue of an oral agreement between the decedent and H. S. Anderson, Jr. Said oral agreement contained no provision for continuance of the partnership in the event of death of one of the partners.

2. Prior to and on the date of his death said Harold S. Anderson, Sr., the decedent, was a member of another co-partnership (hereinafter referred to as the Alaska partnership), consisting of himself and the Anderson sons, in which Harold S. Anderson, Sr., owned a 40% interest, Robert W. Anderson owned a 30% interest, John Hardy Anderson owned a 20% interest, and H. S. Anderson, Jr., owned a 10% interest. This co-partnership was engaged in similar activities within the territory of Alaska under the name of "Anderson Brothers Supply Company of Alaska." The Alaska partnership was created August 31, 1940, by the execution of a written partnership agreement, a true and correct copy of which may be offered in evidence as Exhibit 1.

3. As Exhibit 2, there may be offered in evidence a true and complete copy of an agreement dated December 11, 1942, between Orien H. Anderson, H. S. Anderson, Jr., Administrator, H .S. Anderson, Jr., Robert W. Anderson, John Hardy Anderson, and Orien H. Anderson, as Guardian of William Todd Anderson.

4. On December 23, 1942, H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson, as general partners, and Ethel Hamilton Anderson and Gloria S. Anderson, as limited partners, created two limited partnerships and executed an agreement in connection with each certificate of limited partnership, true and complete copies of which may be received in evidence as Exhibits 3, 4,

5 and 6, respectively. Said limited partnerships were cancelled on December 31, 1943 by mutual consent and agreement, which cancellations were thereafter evidenced by the execution of certificates of cancellation, true and complete copies of which may be received in evidence as Exhibits 7 and 8, respectively .

5. On December 27, 1941 the only activities of the Alaska partnership consisted of subsistence contract work in connection with the construction of the air base at Anchorage, Alaska, pursuant to a contract dated July 24, 1940, a true and complete copy of which may be received in evidence as Exhibit 9.

6. On December 27, 1941 the California partnership was engaged in the following subsistence work and/or had the following purchase orders or contracts for subsistence work:

(a) The operation of the post exchange fountain-grills at Camp San Luis Obispo, California, pursuant to an oral agreement entered into in or about March, 1941, later reduced to writing dated December 9, 1941, a copy of which may be received in evidence as Exhibit 10.

(b) The operation of the post exchange fountain-grills at Camp Roberts, California, pursuant to a contract dated June 5, 1941, a copy of which may be received in evidence as Exhibit 11. Said contract was cancelled by the Camp Roberts Post Exchange on February 1, 1943, due to change in military personnel and policy at this particular camp.

(c) The operation of the in-plant feeding facilities at the California Shipbuilding Yards, Terminal Island, California, pursuant to a contract dated September 2, 1941, a copy of which may be received in evidence as Exhibit 12. Said contract was cancelled by California Shipbuilding Corporation on July 27, 1942.

(d) The operation of the in-plant feeding facilities at the Douglas Aircraft Plant in Long Beach, California, pursuant to an oral agreement entered into on or about July 1, 1941, which agreement was cancelled by Douglas Aircraft Company on November 19, 1942.

(e) The California partnership, prior to the death of the decedent, and the surviving partner thereafter, received the following purchase orders from the Defense Plant Corporation, acting by and through Basic Magnesium, Inc., for the carrying on of subsistence work during the construction of the Basic Magnesium Plant near Los Vegas, Nevada:

Purchase Order Number	Date
211	December 8, 1941
Change Order No. 1	December 15, 1941
Change Order No. 2	April 17, 1942
212	December 15, 1941
213	December 16, 1941
Change Order No. 1	April 14, 1942
214	December 15, 1941
Change Order No. 1	April 15, 1942
Change Order No. 2	May 18, 1942

Purchase Order Number	Date
1933	March 2, 1942
Change Order No. 1	May 2, 1942
Change Order No. 2	May 19, 1942
3836	April 21, 1942
6167	October 23, 1942
Change Order No. 1	September 2, 1944

True and correct copies of said purchase and change orders may be received in evidence as Exhibit 13.

(f) Said Purchase orders and change orders were superseded by an agreement dated July 1, 1943 and by a settlement and release executed as of July 1, 1943, true and complete copies of which may be received in evidence as Exhibits 14 and 15, respectively.

(g) A reasonable estimate of the useful economic life of the respective contracts and purchase orders referred to in paragrph 5 and paragraph 6 above, as determined by an Internal Revenue Agent for the purpose of computing depreciation of physical equipment, was two years from and after December 31, 1941.

7. The partnership return of the new limited partnership returns "H. S. Anderson Co." for the years 1942 and 1943 showed as deductions the sums of $58,082.52 and $77,483.28 respectively, each of which figures included the sum of $37,500.00 representing one-half of the $75,000 required to be paid under Exhibit 2. The partnership returns filed for

the new limited partnership "Anderson Brothers Supply Company of Alaska" for the years 1942 and 1943 showed as deductions the sums of $25,000.00 and $25,000.00 respectively. The commissioner of Internal Revenue determined that said payments were not deductible by the partnerships or by the individual partners thereof, and as a result of said determination the partners (plaintiffs herein) paid to the Collector deficiencies in income tax for the year 1943, with interest thereon, which are the subject of these suits for refund.

8. There may be received in evidence as Exhibits 16 and 17 respectively, copies of the balance sheets of the California and Alaska partnerships as of December 31, 1941. There may be received as Exhibits 18 and 19 respectively, copies of Revenue Agent's Reports dated December 30, 1942, by Examining Officer O. M. Drotts covering the years 1939, 1940 and 1941 in the case of the California partnership and the year 1941 in the case of the Alaska partnership.

Dated: This 8th day of January, 1954.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,

By /s/ ADAM Y. BENNION,
Counsel for Plaintiffs.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Chief, Tax Division, Assistant
United States Attorney;

EUGENE HARPOLE,
Special Attorney,
Internal Revenue Service;

/s/ EDWARD R. McHALE,
Counsel for Defendant.

[Endorsed]: Filed January 13, 1954.

[Title of District Court and Causes.]

MINUTES OF THE COURT
Jan. 28, 1954

(Consolidated Cases)

Present: Hon. James M. Carter, District Judge.
Counsel for Plaintiffs: Adam Bennion.
Counsel for Gov't: Edw. R. McHale, Ass't U. S. Att'y.

Proceedings: For consolidated trial. Both sides answer ready.

Attorney Bennion makes opening statement for plaintiffs.

Plf's Ex. 1 to 21 incl. are admitted in evidence.

Deft's Ex. A is admitted in evidence.

At 12:05 PM court recesses to 2 PM.

At 2 PM court reconvenes herein, and all being present as before, including counsel for both sides.

Harold S. Anderson, Jr., witness for defendants, is called, sworn, and testifies.

It Is Ordered that cause is continued to 10 a.m., Jan. 29, 1954, for further trial.

EDMUND L. SMITH,
Clerk;

By L. B. FIGG,
Deputy Clerk.

[Title of District Court and Causes.]

MINUTES OF THE COURT
Jan. 29, 1954

(Same Order in Each Case)

(Consolidated Cases)

Present: Hon. James M. Carter, District Judge.
Counsel for Plaintiffs: A. C. Mackay and Adam Bennion;
Counsel for Gov't: Edw. R. McHale, Ass't U. S. Att'y.

Proceedings: For further consolidated trial:

Harold S. Anderson, Jr., witness for plaintiff, heretofore sworn, testifies further.

Plfs' Ex. 22, 23, and 24 are admitted in evidence.

Deft's Ex. B is marked for ident.

Plaintiffs rest.

Defendant moves for judgment on the ground

that plaintiffs have failed to sustain their burden of proof at the close of plaintiffs' evidence.

Court Orders said motion denied.

Deft's Ex. B to X, incl., are admitted in evidence.

Defendant rests.

Plaintiffs rest in rebuttal.

Attorney Bennion argues to the Court for plaintiffs.

Attorney McHale argues to the Court for defendant.

It is Ordered that these Consolidated causes stand Submitted upon the filing of briefs 15x15x5, after the delivery of the reporter's transcript of proceedings to counsel by the reporter.

EDMUND L. SMITH,
Clerk,

By L. B. FIGG,
Deputy Clerk.

[Title of District Court and Causes.]

MEMORANDUM OF DECISION

It appears to the Court that the basic question in this case is what the plaintiffs bought. The Government contends they bought the interest of H. S. Anderson, deceased, in the California and Alaska partnerships; that there has been since no sale or transfer of these interests they bought, and being thus a capital investment, the amounts paid may not be deducted from their income tax returns. The

Government also contends that if the plaintiffs bought such interests of H. S. Anderson, deceased, in the two partnerships, the amounts paid may not be allocated to specific items. It distinguishes the Nathan Blum case, where such allocation was made, as being a case where the sole surviving partner bought the interest of the deceased partner with the result that a sole proprietorship and not a partnership resulted.

Plaintiffs contend that they bought specific items: namely, the contracts which the prior partnerships were operating, and that since it was stipulated that such contracts had a life of two years and were completely depleted in 1942 and 1943, plaintiffs should be entitled to deduct what they paid from their incomes and thus recoup their payments in the two years, or at least in the year 1943.

The interest of H. S. Anderson, Sr., in the California partnership at the time of his death was 75% and his son, H. S. Anderson, Jr., owned a 25% interest. The deceased at his death owned 40% interest in the Alaska partnership and his three sons, plaintiffs herein, owned the remaining interest in varying shares.

The parties have stipulated that the two partnerships are controlled by California law. The Uniform Partnership Act was adopted in 1929. At the time in question the sections were in the Civil Code (1941 Ed.), Sections 2418 to 2436. In 1949 the sections were carried over without change into the Corporation Code.

Applying California law to the situation at Anderson's death on December 27, 1941, we see the following:

(1) "A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property." (Section 2420, Civil Code) The word "surplus" is well adjudicated, and means the excess of assets over liabilities.

(2) The death of a partner is cause for dissolution (Section 2425, Civil Code), but a partnership is not terminated by dissolution (Section 2424, Civil Code). On his death, the interest of a deceased partner vests in the surviving partner or partners (unless he was the last surviving partner, and then his interest vests in his legal representative) (Section 2419, Civil Code.)

(3) The surviving partner carries on the partnership for the purpose of winding up the affairs and thus eventually achieving termination (Civil Code Section 2431).

This is exactly what happened in this case. From December 27, 1941, to December 11, 1942, the partnership continued and a Court order was made in the estate proceeding authorizing the business to continue.

On December 11, 1942, agreements were entered into by which the interests of H. S. Anderson, deceased, in the two partnerships were purchased

from his estate; $75,000 was paid for his interest in the California partnership and $50,000 for his interest in the Alaska partnership.

(4) This was strictly in compliance with Section 2436, Civil Code. The legal representative was entitled at his option to interest on this amount or the share of profits earned while the partnership continued after death. He chose profits, and the sum of $228,369.32 was paid into the estate representing this share. This was in accordance with Section 2436, Civil Code.

We pause to note that the agreement of December 11, 1942, and the probate orders show on their face that what was purchased was the interest of the deceased in the partnership. However, tax laws proceed on principles similar to equity in order to determine the reality of situations. So we inquire further.

On its face the agreement by H. S. Anderson, Jr., to purchase the interest of his deceased father in the California partnership appears similar to the Nathan Blum situation, since the purchaser was the sole remaing partner. But the plaintiff proved that all the transactions were part of one plan and that the plaintiffs and their wives had agreed to form the new partnerships and that H. S. Anderson, Jr., acted for himself, his brothers and their wives (the remaining plaintiffs) in purchasing the interest of his father. Similar was the situation concerning the Alaska partnership, when the sons of the deceased

purchased but acted for their wives also pursuant to agreement (Tr. 111-112). Also proof of the financing entered into, in obtaining the money for the purchases, shows the plan and intent.

These facts take the purchase by H. S. Anderson, Jr., of the 75% interest out of the Blum case situation. We do not pass on whether or not we agree with its holding.

Now to a determination of the cases. We think:

(1) That plaintiffs have failed in their burden of proof to show purchase of particular assets.

No proof whatever was offered on the value of the contracts assets at the time of the death of deceased or on December 11, 1942, or what was the value of other assets if the contracts had a value. The written agreements speak of buying an interest in the partnerships. Though plaintiffs (one or more) were members of the prior partnerships, the contracts were never set up on the books as capital assets. The adjusted balance sheet shows the deceased's interest in the California partnership to be in excess of $71,000 without the alleged contracts being listed as capital assets.

It may well be true that the prospects of profits from the contracts impelled the purchase. However, not the contracts, but the interest of the deceased in the partnership was purchased, i.e., his right to his share of the surplus of assets over liabilities (Civil Code, Sec. 2420).

The Courts cannot characterize the situation as one involving good will. If good will was purchased, it cannot be amortized. The record shows that good will was not purchased (Tr. 58, 148), unless it was the small difference between $75,000 and the $71,000 value of the deceased's interest in the partnership according to the revised balance sheet.

There was no dispute that the new partnerships were cancelled at the end of 1943. But there was no evidence of what was distributed on their dissolution or of any sale of the partnership or of the value as of that date of the whole of each partnership or of any particular per cent in either one. The Court cannot say what the value of the 75% and the 40% interests in the two partnerships were as of December 31, 1943. This would have been susceptible of proof. But plaintiffs chose not to consider that they had purchased an interest in each partnership which was a capital asset.

But plaintiffs argue that the interest cannot be followed since the old partnerships ended on December 11, 1942. But there is no reason why the base thus established could not be carried through as in all tax accounting. The new partnerships carried on the business of the old. The percentages held by the former partner's sons were retained and the interest of the deceased father was divided among the sons and the daughters-in-law who supplied the consideration to buy the interest of the deceased father. Thus the identity of the interest purchased was preserved and can be followed.

Thus we have:

	Old Calif. Partnership	New Partnership
H. S. Anderson, Sr.	75%	—
H. S. Anderson, Jr.	25%)	42.5%
Ethel Anderson (his wife)	—)	7.5
Robert Anderson	—)	21.5
Gloria Anderson (his wife)	—)	3.75
John Anderson	—	25.00
	100%	100%

Thus there is no dispute that the 75% interest of the deceased father was split three ways to each of the sons and their wives. The proof shows this was the way the matter was handled and the consideration paid.

In the Alaska partnership the situation was as follows:

	Old Alaska Partnership	New Partnership
H. S. Anderson, Sr. (deceased)	40%	—
Robert Anderson	30%	30%
Gloria Anderson (his wife)	—	3⅓
John Anderson	20	33⅓
H. S. Anderson, Jr.	10	25
Ethel Hamilton	—	8⅓
	100%	100%

Thus each surviving old partner retained the percentage he had, and the 40% purchased from the estate of the deceased father was split among the sons and their wives, and consideration paid therefor, as follows:

H. S. Anderson, Jr.	15%
Ethel (his wife)	8⅓%
Robert Anderson	
Gloria (his wife)	3⅓%
John Anderson	13⅓%
(no wife)	
	40%

Thus the identity of the 75% and the 40% interest in the old partnerships were carried over into the new, and carried the same percentage in the new partnerships. The purchase price was a capital investment and became the base for each interest in the new partnerships.

(2) The Court finds that interests in the partnership were purchased and not specific assets, on the same reasoning as above, and believes the cases are controlled by Stelgenbaur v. U. S. (9 Cir. 1940), 115 F.(2d) 283, Commissioner v. Shapiro (6 Cir. 1942), 125 F.(2d) 532, and Thornley v. Commissioner (3 Cir. 1945), 147 F.(2d) 416.

There was no reason why the plaintiffs could not have purchased the specific contracts if they so desired. The surviving partner or partners as part of dissolution, looking to termination, could have purchased specifically the contracts and capitalized them in the new partnerships. The Court knows of no reason why the surviving partner, during dissolution, may not sell for a fair price partnership assets and reduce them to cash. The remaining interest of the deceased after the conversion of specific assets to cash could have also been purchased.

Why was this not done? If the contracts were worth $100,000 in the California partnership (plaintiffs contend the deceased's 75% interest was worth $75,000), then the new partnership or the sons acting for the new partnership would have had to pay into the old partnership $100,000. The old partnership would then have held the cash instead of the contracts. To then purchase the interest of the deceased in the California partnership, the buyer would certainly have had to pay more than $75,000. It is obvious the partnership had other assets; and witness the $71,000 value of the deceased's interest on the books, without the contracts being set up as assets. The realities are that the widow and the probate court would have insisted on closer to $150,000 for the value of the interest in the partnership had the conversion of the contracts to cash taken place.

The result of such conversion would have been to clearly capitalize the contracts in the old partnership, something that had never been done.

True, the three sons involved here, who each took 1/6 of the separate property of their father, would have recovered from the estate approximately ½ (3 x 1/6) of the additional amount paid for the partnership interests. The widow and the fourth son (the minor) would have recovered from the estate ½ the additional amount received for the partnership interests in such method of handling.

Plaintiffs have been represented here and in their dealings with the estate by able counsel. We con-

clude the actions of plaintiffs were taken advisedly and the alternatives above rejected.

At first blush, the equities of the case seemed heavily in favor of plaintiffs, but the deceased partner and his partner sons, before his death, never treated the contracts as capital items. Now, through the incident of death, the plaintiffs claim the right to recoup what they paid for their father's interest in the partnerships.

Certainly the acts of the deceased and the plaintiffs, as partners in the old partnerships, throw light on their intent and on the realities of the situation.

Dated: June 30, 1954.

/s/ JAMES M. CARTER,
U. S. District Judge.

[Endorsed]: Filed June 30, 1954.

[Title of District Court and Causes.]

MINUTES OF THE COURT
June 30, 1954

Present: The Honorable James M. Carter, District Judge.

These cases having been submitted after trial and the Court having duly considered them,

The Court now hands down its memorandum of decision, finding in favor of defendant and against the plaintiff in each case, and in accordance with said memorandum,

It Is Ordered that counsel for defendant prepare findings of fact, conclusions of law and judgments, pursuant to local Rule 7, and submit them to the Court within ten days.

EDMUND L. SMITH,
Clerk;

By L. B. FIGG,
Deputy Clerk.

[Title of District Court and Causes.]

STIPULATION

It Is Hereby Stipulated by and between the above-named parties, through their respective counsel, that the law of the State of California shall govern the disposition of any question arising out of the existence, termination or dissolution of any of the partnerships involved in the above-entitled proceedings.

/s/ ADAM Y. BENNION,
Counsel for Plaintiffs.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant United States Attorney;

/s/ EDWARD R. McHALE,
Counsel for Defendant.

It is so ordered: 6/30/54.

/s/ JAMES M. CARTER.
Judge.

[Endorsed]: Filed June 30, 1954.

[Title of District Court and Causes.]

MINUTES OF THE COURT

March 18, 1955
At Los Angeles, Calif.

(Same Order in Each Case.)

Present: Hon. James M. Carter, District Judge.
Counsel for Plaintiffs: No appearance.
Counsel for Gov't: No appearance.

Proceedings:

It Is Ordered that the plaintiffs' objections to defendant's proposed Findings of Fact and Conclusions of Law are overruled, except as to such interlineal changes made by the Court in the proposed findings, as to which the objections are sustained, and Court signs the findings of facts, conclusions of law and judgment.

EDMUND L. SMITH,
Clerk;

By L. B. FIGG,
Deputy Clerk.

[Title of District Court and Cause.]

No. 12044-C Civil

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above case came on regularly for trial on January 28 and 29, 1954, before the Hon. James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing through its counsel, Mackay, McGregor, Reynolds and Bennion, by Adam Y. Bennion, Esq., and the defendant appearing through its counsel, Laughlin E. Waters, United States Attorney for the Southern District of California, and Edward R. McHale, Assistant United States Attorney for said District, Chief, Tax Division, was consolidated for trial with the cases of Ethel H. Anderson v. United States of America, No. 12045-C; Robert W. Anderson v. United States of America, No. 12046-C; Gloria S. Anderson v. United States of America, No. 12047-C; and John Hardy Anderson v. United States of America, No. 12048-C; and evidence both oral and documentary having been received and the matter having been submitted on the evidence, written memoranda and oral argument, and the Court having duly considered the same and on June 30, 1954, having filed its Memorandum of Decision and Order to Prepare Findings of Fact, Conclusions of Law and Judgment, the Court now finds as follows:

Findings of Fact

I.

The plaintiff is an individual residing in Los Angeles, California, within the Southern Judicial District of California, Central Division.

II.

The defendant is a corporation sovereign and body politic. The taxes and interest for the recovery of which this action is brought were paid to and collected by Harry C. Westover, who was, at the time of such payment and collection, the duly appointed, qualified and acting Collector of Internal Revenue in and for the Sixth Collection District of the State of California. Said Harry C. Westover was not in office as said Collector of Internal Revenue at the time this action was commenced.

III.

The plaintiff paid a deficiency of income tax for the year 1943 in the sum of $18,131.61 and interest thereon in the sum of $3,103.24, to the aforesaid former Collector of Internal Revenue, Harry C. Westover, in the amounts and on the dates as follows:

> $5,000.00 on February 26, 1947; $15,332.59 on March 19, 1947; $902.32 on March 25, 1947, and $0.06 by transfer to a January account.

IV.

Plaintiff filed with the Collector of Internal Revenue on December 28, 1948, a claim for refund of

the deficiency paid by plaintiff in the amount set forth in the immediately preceding paragraph, the claim for refund was based on several alleged alternative grounds, which were that either the plaintiff or a partnership or partnerships of which plaintiff was a member made payments to the estate of H. S. Anderson, Sr., which payments were allowable as deductions for expenses under I.R.C. §§ 23(a)(1) or 23(a)(2), from income tax for the year 1943; or that they were deductible by a limited partnership, and the partners thereof including plaintiff, in 1944, when the limited partnerships were terminated and dissolved; or that they were payments which were to be capitalized and then amortized and depreciated over the useful life of the property acquired thereby, to wit, certain contracts; or that a loss deduction was incurred in the year 1943 when the value of the contracts were exhausted; or that a loss was similarly suffered in 1944 which would, as a net operating loss, be carried back to prior years and then deducted. On August 29, 1949, the Commissioner of Internal Revenue rejected in full plaintiff's claim for refund.

V.

On or before March 15, 1945, the plaintiff paid income taxes for the year 1944 in the sum of $3,920.20 to the aforesaid former Collector of Internal Revenue, Harry C. Westover. On March 15, 1948, the plaintiff filed with said Collector of Internal Revenue a claim for refund of the total income tax paid by plaintiff for the calendar year

1944 upon the alleged grounds that if the payments made to the Estate of H. S. Anderson, Sr., during the years 1942 and 1943 were not properly deductible for those years, they were deductible by the limited partnerships and the partners thereof in 1944, when said limited partnerships were terminated and dissolved, and that not only would refunds of the entire amounts of 1944 taxes be proper, but that each partner would be entitled to a carry-back loss, which would entitle him or her, in addition, to a refund of a portion of the deficiency paid for the year 1943.

VI.

This action was commenced on August 4, 1950, within the time required by law and arises under the Internal Revenue laws of the United States.

VII.

Harold S. Anderson, Sr., died intestate on December 27, 1941. Prior to and on the date of his death he was a member of a co-partnership (hereinafter referred to as the California partnership) consisting of himself and his son, H. S. Anderson, Jr., in which Harold S. Anderson, Sr., the decedent, owned a 75% interest and H. S. Anderson, Jr., owned a 25% interest. The business of said co-partnership consisted of subsistence contracting work (feeding and housing defense workers) and was conducted in the States of California and Nevada under the name of "H. S. Anderson." The California partnership was organized on January 1, 1938, by virtue of an oral agreement between the

decedent and H. S. Anderson, Jr. Said oral agreement contained no provision for continuance of the partnership in the event of death of one of the partners.

VIII.

Prior to and on the date of his death said Harold S. Anderson, Sr., the decedent, was a member of another co-partnership (hereinafter referred to as the Alaska partnership), consisting of himself and the Anderson sons, in which Harold S. Anderson, Sr., owned a 40% interest, Robert W. Anderson owned a 30% interest, John Hardy Anderson owned a 20% interest, and H. S. Anderson, Jr., owned a 10% interest. This co-partnership was engaged in similar activities within the territory of Alaska under the name of "Anderson Brothers Supply Company of Alaska." The Alaska partnership was created August 31, 1940, by the execution of a written partnership agreement.

IX.

On December 11, 1942, an agreement was made and entered into between Orien H. Anderson, widow of H. S. Anderson, H. S. Anderson, Jr., as Administrator of the Estate of H. S. Anderson, Deceased, H. S. Anderson, Jr., individually, Robert W. Anderson, and John Hardy Anderson, sons by a former marriage, and Orien H. Anderson, as Guardian of the person and estate of William Todd Anderson, a minor, whereby the said parties made certain declarations and admissions for the purpose of settling certain controversies and differences between

them relative to the extent and character of the estate of H. S. Anderson, deceased. As recited in said written agreement, for a valuable consideration received by each of the parties thereto and in further consideration of the promises and agreements by each of the parties thereto to be performed, among other things it was agreed as follows:

"2. Prior to and at the time of the death of H. S. Anderson, deceased, on December 27, 1941, he was a member of a co-partnership consisting of himself and his son, H. S. Anderson, Jr., in which H. S. Anderson, deceased, owned a 75% interest, and H. S. Anderson, Jr., a 25% interest of said co-partnership. The business of said co-partnership consisted of all of the enterprises then carried on and now being carried on in the States of California and Nevada. Prior to and at the time of the death of H. S. Anderson, deceased, the business of said co-partnership was conducted under the name of 'H. S. Anderson'; and subsequent to the death of H. S. Anderson, deceased, said business has been conducted in part under the name of 'Anderson Bros. Supply Co. of Nevada.' The said co-partnership will herein be referred to as 'The California Partnership.'

"3. Prior to and at the time of the death of H. S. Anderson, deceased, he was a member of a co-partnership consisting of himself and Anderson's Sons, in which H. S. Anderson, deceased, owned a 40% interest, Robert W. Anderson owned a 30% interest, John Hardy Anderson owned a 20% interest, and H. S. Anderson, Jr., owned a 10% interest. The

business of the said co-partnership consisted of all of the enterprises then carried on and now being carried on in the Territory of Alaska. The business of said co-partnership has been and now is being carried on under the name of Anderson Bros. Supply Co. of Alaska. The said co-partnership will hereinafter be referred to as the Alaska Partnership.

* * *

"5. The parties hereto have investigated and it is agreed that the interest of H. S. Anderson, deceased, at the time of his death, in the foregoing partnerships and his other property was as follows:

"(a) In the California Partnership, a 75% interest, which interest was the separate property of H. S. Anderson, deceased;

"(b) In the Alaska Partnership, a 40% interest thereof, which interest was the community property of H. S. Anderson, deceased, and Mrs. Anderson;

* * *

"6. H. S. Anderson, Jr., as surviving partner of the California Partnership, in full satisfaction and discharge of all claims of the estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of said H. S. Anderson in his lifetime and that his estate has acquired since his death in and to the California Partnership, hereby agrees to pay into the estate of H. S. Anderson, deceased, the following sums of money:

"(a) The sum of $75,000.00, representing, as the parties hereto agree, the fair market value at date of the death of the decedent, of his interest in said California partnership;

* * *

"8. H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson, as surviving partners of The Alaska Partnership, in full satisfaction and discharge of all claims of the estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of H. S. Anderson in his lifetime and that his estate has acquired since his death in and to The Alaska Partnership, hereby agree to pay into the estate of H. S. Anderson, deceased, the following sums of money:

"(a) The sum of $50,000.00, representing, as the parties hereto agree, the fair market value at date of death of the decedent of his interest in said Alaska Partnership;

"(b) The sum of $38,000.00, representing, as the parties hereto agree, the estate's share of the profits of The Alaska Partnership from the date of the death of the decedent, December 27, 1941, to the date of this agreement.

* * *

"17. All the parties hereto agree that the real property and the improvements thereon, said real property being described as follows:

"Lots 65 and 66, in the Industrial Center Tract, in the County of Los Angeles, State of

California, as per map recorded in Book 12, page 101, of Maps, in the office of the County Recorder of said County,

"and also the shares of stock of Douglas Oil & Refining Corporation, although in the record name of H. S. Anderson, are in reality the property of The California Partnership, and all parties hereto will join in such proceedings as may be proper, convenient or necessary to effectuate quieting title to that effect.

* * *

"22. In addition to the property set forth in paragraph 17, hereof, there is also a certain oil lease in Ventura County and certain Puett Starting Gate Company stock which is in the name of H. S. Anderson, deceased, but which is the property of the California co-partnership and which is to be handled as provided for in said paragraph 17."

X.

Said agreement of December 11, 1942, between Orien H. Anderson in her personal capacity and in her capacity as guardian for her son, William Todd Anderson, a minor, H. S. Anderson, Jr., as administrator of the Estate of H. S. Anderson, Deceased, and individually, Robert W. Anderson and John Hardy Anderson was approved by the Superior Court of the State of California in and for the County of Los Angeles, sitting as a court of probate, on December 22, 1942, by order of Court which further found as follows:

"That H. S. Anderson, deceased, owned a 75% interest in a California partnership known as H. S. Anderson, also known as H. S. Anderson Co., which interest was separate property.

"That H. S. Anderson, Deceased, owned a 40% interest in a partnership known as Anderson Bros. Supply Co. of Alaska, which interest was community property. * * *

"That the value of the estate's interest in the California partnership as of the date of death was $75,000.00.

"That the value of the estate's interest in the Alaska partnership as of the date of death was $50,000.00. * * *

"That H. S. Anderson, Jr., as the surviving partner of the California partnership, in full satisfaction and discharge of all claims of the Estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of said H. S. Anderson in his lifetime and that his estate has acquired since his death in and to the California partnership, shall pay into the Estate of H. S. Anderson, deceased, the following sums of money:

> "(a) The sum of $75,000.00, representing the fair market value at date of the death of the decedent of his interest in said California partnership. * * *

"That said H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson, as surviving partners of the Alaska partnership, in full satis-

faction and discharge of all claims of the Estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of H. S. Anderson in his lifetime and that his estate has acquired since his death in and to the Alaska partnership, shall pay into the estate of H. S. Anderson, deceased, the following sums of money:

> "(a) The sum of $50,000.00, representing the fair market value at date of death of the decedent of his interest in said Alaska partnership. * * *"

XI.

On December 27, 1941, the only activities of the Alaska partnership consisted of subsistence contract work in connection with the construction of the air base at Anchorage, Alaska, pursuant to a lease contract dated July 24, 1940, the lease contract and operations thereunder being terminable at the will of the Secretary of War.

XII.

On December 27, 1941, the California partnership was engaged in the following subsistence work and/or had the following purchase orders or contracts for subsistence work:

(a) The operation of the post exchange fountain-grills at Camp San Luis Obispo, California, pursuant to an oral agreement entered into in or about March, 1941, later reduced to writing dated December 9, 1941, terminable on 30 days' notice by either party.

(b) The operation of the post exchange fountain-grills at Camp Roberts, California, pursuant to a contract dated June 5, 1941, terminable on 60 days' notice by either party. Said contract was cancelled by the Camp Roberts Post Exchange on February 1, 1943, due to change in military personnel and policy at this particular camp.

(c) The operation of the in-plant feeding facilities at the California Shipbuilding Yards, Terminal Island, California, pursuant to a contract dated September 2, 1941, terminable on 48 hours' notice by California Shipbuilding Corporation. Said contract was cancelled by California Shipbuilding Corporation on July 27, 1942.

(d) The operation of the in-plant feeding facilities at the Douglas Aircraft Plant in Long Beach, California, pursuant to an oral agreement entered into on or about July 1, 1941, which agreement was cancelled by Douglas Aircraft Company on November 19, 1942.

(e) The California partnership, prior to the death of the decedent, and the surviving partner thereafter, received the following purchase orders from the Defense Plant Corporation, acting by and through Basic Magnesium, Inc., for the carrying on of subsistence work during the construction of the Basic Magnesium Plant near Las Vegas, Nevada:

Purchase Order Number	Date
211	December 8, 1941
Change Order No. 1	December 15, 1941
Change Order No. 2	April 17, 1942

Purchase Order Number	Date
212	December 15, 1941
213	December 16, 1941
Change Order No. 1	April 14, 1942
214	December 15, 1941
Change Order No. 1	April 15, 1942
Change Order No. 2	May 18, 1942
1933	March 2, 1942
Change Order No. 1	May 2, 1942
Change Order No. 2	May 19, 1942
3836	April 21, 1942
6167	October 23, 1942
Change Order No. 1	September 2, 1944

(f) Said Purchase orders and change orders were superseded by settlement and release dated July 1, 1943, and by a new contract executed as of July 1, 1943, terminable by either party on 90 days' notice.

(g) A reasonable estimate of the useful economic life of the respective contracts and purchase orders referred to in paragraph XI and paragraph XII (a) to (e) above, as determined by an Internal Revenue Agent for the purpose of computing depreciation of physical equipment, was two years from and after December 31, 1941.

XIII.

The partnership return of the new limited partnership returns "H. S. Anderson Co." for the years 1942 and 1943 showed as deductions the sums of $58,082.52 and $77,483.28, respectively, each of which figures included the sum of $37,500.00 representing one-half of the $75,000.00 required to be paid under

the agreement dated December 11, 1942, between Orien H. Anderson, H. S. Anderson, Jr., administrator, H. S. Anderson, Jr., Robert W. Anderson, John Hardy Anderson, and Orien H. Anderson as guardian of William Todd Anderson.

XIV.

At the time of the death of H. S. Anderson, Sr., he had an interest in the California partnership of 75% and his son, H. S. Anderson, Jr., owned a 25% interest. At the time of his death the decedent owned a 40% interest in the Alaska partnership and his three sons owned the remaining interest in varying shares.

XV.

The plaintiff has failed to show by preponderance of evidence that H. S. Anderson, Jr., purchased particular assets of the California partnership, the H. S. Anderson Co., from the estate of H. S. Anderson, Deceased, and has failed to show that H. S. Anderson, Jr., Robert W. Anderson and John Hardy Anderson, purchased particular assets of the Alaska partnership from the estate of his father.

XVI.

Whatever contracts were in existence at the time of death of the deceased had no substantial value and had as a value only a small percentage of the value of $100,000.00 contended for by plaintiffs. The contracts were never set up on the books of the partnerships as capital assets and never carried any value on the books.

XVII.

At the time of decedent's death, the balance sheet of the California partnership as properly adjusted indicates that the decedent had an interest in the California partnership in excess of $71,000.00, without the alleged contracts being listed as assets.

XVIII.

The $75,000.00 paid by H. S. Anderson, Jr., for his father's interest in the California partnership was for the payment of an interest; and the difference between $71,000.00 adjusted book value of that interest and the $75,000.00 paid was his right to his share of the excess of assets over liabilities, and the $4,000.00 difference, if anything, was good will or going concern value.

XIX.

On December 23, 1942, a limited partnership for the operation of the Anderson Bros. Supply Co. of Alaska was entered into between H. S. Anderson, Jr., Robert W. Anderson, John Hardy Anderson, Ethel Hamilton Anderson, the wife of H. S. Anderson, Jr., and Gloria S. Anderson, the wife of Robert Anderson. The new limited partnership was terminated and dissolved on December 31, 1943, by mutual consent and agreement. There is no evidence in the record of what was distributed on the dissolution. There is no evidence in the record of any sale of the partnership. There is no evidence in the record of the value of the partnership as of the date of dissolution and termination of the whole of the

partnership or of any particular partner's percentage of interest in either partnership.

XX.

There was formed on December 23, 1942, by and between H. S. Anderson, Jr., Robert W. Anderson, John Hardy Anderson and Ethel Hamilton Anderson, the wife of H. S. Anderson, Jr., and Gloria S. Anderson, the wife of Robert Anderson, a limited partnership known as the H. S. Anderson Company to carry on the business theretofore known as the H. S. Anderson Co. and the Anderson Bros. Supply Co. of Nevada. Said limited partnership was terminated and dissolved as of the close of business on December 31, 1943, by mutual consent and agreement. There is no evidence in the record of what was distributed on the dissolution of the partnership. There is no evidence in the record of any sale of the partnership. There is no evidence in the record of the value of the partnership as of the date of the dissolution and termination of the whole of the partnership or of any particular partner's percentage of interest in either partnership.

XXI.

The new partnerships, to wit, the limited partnerships of H. S. Anderson Co. and the Anderson Bros. Supply Co. of Alaska, carried on the business of the old partnerships. The percentages held by the former partner's sons were retained and the interest of the deceased father was divided among the sons and the daughters-in-law who supplied the consid-

eration to buy the interest of the deceased father. Thus, the identity of the interest purchased was preserved and can be followed.

Thus we have:

	Old Calif. Partnership	New Partnership
H. S. Anderson, Sr.	75%	—
H. S. Anderson, Jr.	25%)	42.5%
Ethel Anderson (his wife)	—)	7.5
Robert Anderson	—)	21.5
Gloria Anderson (his wife)	—)	3.75
John Anderson	—	25.00
	100%	100%

The 75% interest of the deceased father was split three ways to each of the sons and their wives. This is the way the matter was handled and consideration paid.

XXII.

Identity of the interest purchased was preserved as well in the Alaska partnership and can be followed.

Thus we have:

	Old Alaska Partnership	New Partnership
H. S. Anderson, Sr. (deceased)	40%	—
Robert Anderson	30%)	30%
Gloria Anderson (his wife)	—)	3⅓
John Anderson	20%	33⅓
H. S. Anderson, Jr.	10%	25
Ethel Hamilton	—	8⅓
	100%	100%

Thus each surviving old partner retained the percentage he had, and the 40% purchased from

the estate of the deceased father was split among the sons and their wives, and consideration paid therefor, as follows:

H. S. Anderson, Jr.	15%
Ethel (his wife)	8⅓%
Robert Anderson	
Gloria (his wife)	3⅓%
John Anderson (no wife)	13⅓%
Total	40%

XXIII.

The identities of the 75% and 40% interest in the old partnerships were carried over into the new, and carried the same percentage in the new partnerships. The purchase price was a capital investment and became the base for each interest in the new partnerships.

XXIV.

Interests in the respective partnerships were purchased and not specific assets. The sons and their wives could have purchased the specific contracts if they desired but did not do so. Had they done so, and paid into the estate $100,000.00 which they contend is the value of the contracts they could not have purchased thereafter, the interest of the decedent in the California partnership for $75,000.00 and interest in the Alaska partnership for $40,000.00 as the partnerships had other assets and had the value that the plaintiffs now contend been placed upon them, they would have had to pay closer to $150,000.00 for the interest of the decedent in the California partnership alone.

XXV.

The three brothers, H. S., Jr., Robert and John, could have purchased the contracts for cash and thus capitalized the contracts in the partnership, but that was not done. Had such a course been taken, the three sons involved here, who each took 1/6 of the separate property of the father, would have recovered from the estate approximately ½ (three times 1/6), of the additional amount paid for the partnership interest. The widow and the fourth son (the minor) would have recovered from the estate one-half the additional amount received for the partnership interest in such method of handling. The three brothers have been represented and were represented in their dealings with the estate by able counsel and the actions of the plaintiffs and the brothers and sisters-in-law were taken advisedly and the alternatives above rejected

XXVI.

Before and up to the date of his death, the decedent and his partner-sons never treated the contracts as capital items. The acts of the deceased on the plaintiffs as partners in the old partnerships have a bearing on their intent and the realities of the situation.

XXVII.

The plaintiff has failed to establish that the California partnership had an asset of substantial value at the date of H. S. Anderson, Senior's death in what later consisted of a subsistence business at

the Basic Magnesium plant at Roysen, Nevada. On the contrary, the evidence indicates that very little beyond preliminary negotiations for the carrying on of a subsistence business had been consummated at the time of his death, that all the parties to the matter reconsidered it after the death, and only after being assured by H. S. Anderson, Jr., and his father-in-law, that H. S. Anderson, Jr., and his brothers were willing, and able, in their own right to carry it on, were further purchase orders given to H. S. Anderson. The method of arranging for the subsistence business to be carried on was by purchase orders executed by the contractor alone and not until July 1, 1943, was a binding bilateral contract between H. S. Anderson Co. and the contractor entered into, which was a year and a half after the death of H. S. Anderson and long after the purchase of the interest of H. S. Anderson, deceased, from his estate and the formation of a new limited partnership between the sons and sisters-in-law of the sons and wives of the Anderson sons. The contracts have no value, were not purchased and could not be deducted as expenses paid for the production or collection of income, or the management, conservation or maintenance of property held for the production of income, or could not be capitalized and amortized or depreciated or allowed as a loss in either 1943 or 1944.

And from these facts the Court concludes as follows:

Conclusions of Law

I.

The Court has jurisdiction of this controversy and of the parties hereto.

II.

The plaintiff has failed to sustain plaintiff's burden of proof that the defendant erroneously and illegally assessed and collected from plaintiff income tax for years 1943 and 1944 and erroneously and illegally failed and refused to allow plaintiff's claims for refund and to refund to plaintiff the amounts claimed.

III.

H. S. Anderson, Jr., Robert Anderson and John Anderson purchased the interest of H. S. Anderson, deceased, in the two partnerships known as H. S. Anderson Co. and Anderson Supply Co. of Alaska, and not specific assets or specific contracts by the payment to the estate of the father of the sums of $75,000,00 and $40,000.00.

IV.

The plaintiff has not overpaid plaintiff's income tax for either 1943 or 1944.

V.

The sums paid by H S. Anderson, Jr., and his brothers for their interest in the California and Alaska partnerships are not deductible as expenses under any provisions of the Internal Revenue Code, are not amortizable, cannot be capitalized and depreciated and did not give rise to deductible losses in 1943 or 1944 or loss carrybacks from 1944 to 1943.

VI.

Defendant is entitled to judgment that the plaintiff take nothing and for dismissal of the complaint with prejudice, and for its costs.

Dated: This 18th day of March, 1955.

/s/ JAMES M. CARTER,
United States District Judge.

Lodged February 1, 1955.

[Endorsed]: Filed March 18, 1955.

United States District Court for the Southern District of California, Central Division

No. 12044-C Civil

H. S. ANDERSON, JR.,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above case came on regularly for trial on January 28, and 29, 1954, before the Hon. James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing through his counsel, Mackay, McGregor, Reynolds and Bennion, by Adam Y. Bennion, Esq., and the defendant appearing through its counsel Laughlin E. Waters, United States Attorney for the Southern District of

California, and Edward R. McHale, Assistant United States Attorney for said District, Chief, Tax Division, was consolidated for trial with the cases of Ethel H. Anderson v. United States of America, No. 12045-C; Robert W. Anderson v. United States of America, No. 12046-C; Gloria S. Anderson v. United States of America, No. 12047-C; and John Hardy Anderson v. United States of America, No. 12048-C; and evidence both oral and documentary having been received and the matter having been submitted on the evidence, written memoranda and oral argument, and the Court having duly considered the same and on June 30, 1954, having filed its Memorandum of Decision, and having filed its Findings of Fact and Conclusions of Law and ordered that judgment be entered for the defendant in accordance with said Findings and Conclusions;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by his complaint, that the above-entitled action be dismissed with prejudice, and that defendant have judgment for and shall recover from plaintiff the amount of defendant's costs to be taxed by the Clerk of this Court in the sum of $104.15.

Judgment rendered this 18th day of March, 1955.

/s/ JAMES M. CARTER,
United States District Judge.

Lodged February 1, 1955.

[Endorsed]: Filed March 18, 1955.

Docketed and entered March 22, 1955.

United States District Court for the Southern District of California, Central Division

No. 12045-C Civil

ETHEL H. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above case came on regularly for trial on January 28 and 29, 1954, before the Hon. James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing through her counsel, Mackay, McGregor, Reynolds and Bennion, by Adam Y. Bennion, Esq., and the defendant appearing through its counsel Laughlin E. Waters, United States Attorney for the Southern District of California, and Edward R. McHale, Assistant United States Attorney for said District, Chief, Tax Division, was consolidated for trial with the cases of H. S. Anderson, Jr. v. United States of America, No. 12044-C; Robert W. Anderson v. United States of America, No. 12046-C; Gloria S. Anderson v. United States of America, No. 12047-C; and John Hardy Anderson v. United States of America, No. 12048-C; and evidence both oral and documentary having been received and the matter having been submitted on the evidence, written memoranda and oral argument, and the

Court having duly considered the same and on June 30, 1954, having filed its Memorandum of Decision, and having filed its Findings of Fact and Conclusions of Law and ordered that judgment be entered for the defendant in accordance with said Findings and Conclusions;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by her complaint, that the above-entitled action be dismissed with prejudice, and that defendant have judgment for and shall recover from plaintiff the amount of defendant's costs to be taxed by the Clerk of this Court in the sum of $20.00.

Judgment rendered this 18th day of March, 1955.

/s/ JAMES M. CARTER,
United States District Judge.

Lodged February 1, 1955.
[Endorsed]: Filed March 18, 1955.
Docketed and entered March 22, 1955.

United States District Court for the Southern District of California, Central Division
No. 12046-C Civil

ROBERT W. ANDERSON,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above case came on regularly for trial on

January 28 and 29, 1954, before the Hon. James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing through his counsel, Mackay, McGregor, Reynolds and Bennion, by Adam Y. Bennion, Esq., and the defendant appearing through its counsel Laughlin E. Waters, United States Attorney for the Southern District of California, and Edward R. McHale, Assistant United States Attorney for said District, Chief, Tax Division, was consolidated for trial with the cases of H. S. Anderson, Jr. v. United States of America, No. 12044-C; Ethel H. Anderson v. United States of America, No.12045-C; Gloria S. Anderson v. United States of America, No. 12047-C; and John Hardy Anderson v. United States of America, No. 12048-C; and evidence both oral and documentary having been received and the matter having been submitted on the evidence, written memoranda and oral argument, and the Court having duly considered the same and on June 30, 1954, having filed its Memorandum of Decision, and having filed its Findings of Fact and Conclusions of Law and ordered that judgment be entered for the defendant in accordance with said Findings and Conclusions;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by his complaint, that the above-entitled action be dismissed with prejudice, and that defendant have judgment for and shall recover from plaintiff the amount of

defendant's costs to be taxed by the Clerk of this Court in the sum of $20.00.

Judgment rendered this 18th day of March, 1955.

/s/ JAMES M. CARTER,
United States District Judge.

Lodged February 1, 1955.

[Endorsed]: Filed March 18, 1955.

Docketed and entered March 22, 1955.

United States District Court for the Southern District of California, Central Division
No. 12047-C Civil

GLORIA S. ANDERSON,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above case came on regularly for trial on January 28 and 29, 1954, before the Hon. James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing through her counsel, Mackay, McGregor, Reynolds and Bennion, by Adam Y. Bennion, Esq., and the defendant appearing through its counsel Laughlin E. Waters, United States Attorney for the Southern District of California, and Edward R. McHale, Assistant

United States Attorney for said District, Chief, Tax Division, was consolidated for trial with the cases of H. S. Anderson, Jr. v. United States of America, No. 12044-C; Ethel H. Anderson v. United States of America, No. 12045-C; Robert W. Anderson v. United States of America, No. 12046-C; and John Hardy Anderson v. United States of America, No. 12048-C; and evidence both oral and documentary having been received and the matter having been submitted on the evidence, written memoranda and oral argument, and the Court having duly considered the same and on June 30, 1954, having filed its Memorandum of decision, and having filed its Findings of Fact and Conclusions of Law and ordered that judgment be entered for the defendant in accordance with said Findings and Conclusions;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by her complaint, that the above-entitled action be dismissed with prejudice, and that defendant have judgment for and shall recover from plaintiff the amount of defendant's costs to be taxed by the Clerk of this Court in the sum of $20.00.

Judgment rendered this 18th day of March, 1955.

/s/ JAMES M. CARTER,
United States District Judge.

Lodged February 1, 1955.

[Endorsed]: Filed March 18, 1955.

Docketed and entered March 22, 1955.

United States District Court for the Southern District of California, Central Division

No. 12048-C Civil

JOHN HARDY ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above case came on regularly for trial on January 28 and 29, 1954, before the Hon. James M. Carter, United States District Judge, sitting without a jury, the plaintiff appearing through his counsel, Mackay, McGregor, Reynolds and Bennion, by Adam Y. Bennion, Esq., and the defendant appearing through its counsel Laughlin E. Waters, United States Attorney for the Southern District of California, and Edward R. McHale, Assistant United States Attorney for said District, Chief, Tax Division, was consolidated for trial with the cases of H. S. Anderson, Jr. v. United States of America, No. 12044-C; Ethel H. Anderson v. United States of America, No. 12045-C; Robert W. Anderson v. United States of America, No. 12046-C; and Gloria S. Anderson v. United States of America, No. 12047-C; and evidence both oral and documentary having been received and the matter having been submitted on the evidence, written memoranda and oral argument, and the Court having duly con-

sidered the same and on June 30, 1954, having filed its Memorandum of Decision, and having filed its Findings of Fact and Conclusions of Law and ordered that judgment be entered for the defendant in accordance with said Findings and Conclusions;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by his complaint, that the above-entitled action be dismissed with prejudice, and that defendant have judgment for and shall recover from plaintiff the amount of defendant's costs to be taxed by the Clerk of this Court in the sum of $20.00.

Judgment rendered this 18th day of March, 1955.

/s/ JAMES M. CARTER,
United States District Judge.

Lodged February 1, 1955.

[Endorsed]: Filed March 18, 1955.

Docketed and entered March 22, 1955.

United States District Court, Southern District of California, Central Division
Civil Action No. 12044-C

H. S. ANDERSON, JR.,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

NOTICE OF APPEAL

To the Defendant, United States of America, Above Named and to Its Attorneys, Laughlin E.

Waters, United States Attorney; Edward R. McHale, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California:

You, and Each of You, are Hereby Advised that the plaintiff H. S. Anderson, Jr., does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in favor of defendant docketed and entered March 22, 1955, in the above-entitled case.

Dated May 19,1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,

By /s/ ADAM Y. BENNION,

By /s/ STAFFORD R. GRADY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 20, 1955.

United States District Court, Southern District of California, Central Division

Civil Action No. 12045-C

ETHEL H. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF APPEAL

To the Defendant, United States of America, Above Named and to Its Attorneys, Laughlin E. Waters, United States Attorney: Edward R. McHale, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California:

You, and Each of You, are Hereby Advised that the plaintiff, Ethel H. Anderson, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in favor of defendant docketed and entered March 22, 1955, in the above-entitled case.

Dated May 19, 1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,
By /s/ ADAM Y. BENNION,
By /s/ STAFFORD R. GRADY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 20, 1955.

United States District Court, Southern District of California, Central Division
Civil Action No. 12046-C

ROBERT W. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF APPEAL

To the Defendant, United States of America, Above Named and to Its Attorneys, Laughlin E. Waters, United States Attorney; Edward R. McHale, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California;

You, and Each of You, are Hereby Advised that the plaintiff, Robert W. Anderson, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in favor of defendant docketed and entered March 22, 1955, in the above-entitled case.

Dated May 19, 1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,
By /s/ ADAM Y. BENNION,
By /s/ STAFFORD R. GRADY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 20, 1955.

United States District Court, Southern District of California, Central Division
Civil Action No. 12047-C

GLORIA S. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF APPEAL

To the Defendant, United States of America, Above Named and to Its Attorneys, Laughlin E. Waters, United States Attorney; Edward R. McHale, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California:

You, and Each of You, are Hereby Advised that the plaintiff, Gloria S. Anderson, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in favor of defendant docketed and entered March 22, 1955, in the above-entitled case.

Dated May 19, 1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,
By /s/ ADAM Y. BENNION,
By /s/ STAFFORD R. GRADY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 20, 1955.

United States District Court, Southern District of California, Central Division
Civil Action No. 12048-C

JOHN H. ANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF APPEAL

To the Defendant, United States of America, Above Named and to Its Attorneys, Laughlin E. Waters, United States Attorney; Edward R. McHale, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California:

You, and Each of You, are Hereby Advised that the plaintiff, John H. Anderson, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in favor of defendant docketed and entered March 22, 1955, in the above-entitled case.

Dated May 19, 1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,
By /s/ ADAM Y. BENNION,
By /s/ STAFFORD R. GRADY,
Attorneys for Plaintiff.

Acknowledgment of Service attached.

[Endorsed]: Filed May 20, 1955.

In the United States District Court, Southern District of California, Central Division

Nos. 12044-C, 12045-C, 12046-C, 12047-C and 12048-C

H. S. ANDERSON, JR.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

And Related Cases.

Honorable James M. Carter, Judge Presiding.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday, January 28, 1954

Appearances:

For the Plaintiffs:

MACKAY, McGREGOR, REYNOLDS & BENNION, By

ADAM BENNION, ESQ., and
A. CALDER MACKAY, ESQ.

For the Defendant:

LAUGHLIN E. WATERS,
United States Attorney; By

EDWARD R. McHALE,
Assistant United States Attorney.

Thursday, January 28, 1954, 10:00 A.M.

(Other court matters.)

The Court: Let me take a recess in this next case and read over your stipulation of facts and go on from there.

Mr. McHale: Before your Honor takes a recess, can I present my supplemental trial memorandum?

The Court: Yes.

This is Anderson v. United States, Mr. Reporter, Nos. 12044 to 12048, inclusive.

Mr. McHale: May the record show that I also served Mr. Bennion with a copy.

The Court: How long do you think it will take to try this case?

Mr. Bennion: Your Honor, I think we can finish today. That is my feeling.

Mr. McHale: I think Mr. Bennion is right on that, your Honor. I think most of the case is going to depend upon the documents.

Mr. Bennion: I would say that we have probably 20 exhibits which we have agreed to put in. If I could just put them in when we start and explain what they are, I think we can get them all in without much delay in time.

The Court: They are going in practically by stipulation, aren't they? [3*]

Mr. McHale: I think all but one, your Honor.

The Court: Why don't you, meanwhile, before you call me back out here, mark all your exhibits with the clerk, the plaintiff using the number series. And, Mr. McHale, do you have some exhibits?

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

Mr. McHale: I may have some later in the trial, but these we have agreed upon.

The Court: All right.

The Clerk: Give them to me in the order in which you want them marked.

(A recess was taken.)

The Clerk: Your Honor, during the recess I have marked the following exhibits for identification: Plaintiff's Exhibits 1 to 17, inclusive; and Defendant's Exhibit A.

The Court: All right.

(The documents referred to were marked Plaintiff's Exhibits 1 to 17, inclusive; and Defendant's Exhibit A, for identification.)

Mr. Bennion: May it please the court, this is a suit for income tax refund, as a matter of fact, five suits by five related taxpayers, but the same issue is involved in each of the five cases and they have heretofore been consolidated. Fundamentally, the issue grows out of the disallowance by the Commissioner of certain deductions taken by these five taxpayers in both the years of '42 and '43, growing out of payments [4] made to or for the estate of Harold S. Anderson, Sr., who died in December, 1941.

The cause of action we have here grows out of the proper treatment to be accorded those payments. At the time he died—I may say, your Honor, that the parties here have agreed upon a rather short stipulation of facts——

The Court: I just got through reading it.

Mr. Bennion (Continuing): ——consisting of about four pages, which I should like to offer at this time if they are not already deemed in evidence.

The Court: The pretrial stipulation of facts will be received in evidence as part of the record of the case.

Mr. Bennion: Thank you, your Honor.

Now, in line with that stipulation, Mr. Anderson, Sr., at the time he died in 1941, was a member of two partnerships; one with Harold S. Anderson, Jr., which we have called the California partnership, and in which the decedent owned 75 per cent interest and Harold S. Jr., owned the remaining 25 per cent interest; and the other partnership was referred to by us as the Alaska partnership, in which not only the decedent but his three sons were members.

After he died an agreement was drawn up, after rather protracted negotiations, nearly a year later in 1942 an agreement was entered into under which Harold S. Anderson, Jr., as the surviving partner of the California partnership agreed to [5] pay the estate of the decedent $75,000, representing the agreed fair market value at the date of death of whatever interest the decedent or his estate had in the California partnership. And the agreement contained similar provisions regarding the Alaska partnership. That is, the three surviving partners, the three sons, agreed to pay to the estate the sum of $50,000, representing the agreed fair market

value of the decedent's interest or the estate's interest in the Alaska partnership or business.

Now, the evidence will show, if your Honor please, that the business in the meantime, prior to the execution of this agreement, had been carried on by the surviving partners, and at or about the time this agreement was entered into the three brothers entered into two new limited partnership agreements in which the wives of the two who at that time were married were also partners, they were the limited partners, for the purpose of carrying on the respective businesses in the future.

And I may say that the evidence will show that that arrangement was one which had been agreed upon shortly after the decedent died in December of 1941.

We have agreed in our pretrial stipulation that various documents may be admitted in evidence, and the clerk, I understand, has marked them for identification. I would like at this time, if your Honor please, to move that they be received in evidence in line with our stipulation. [6]

The Court: Any objection?

Mr. McHale: Just with respect to No. 16, your Honor. We have a corrected balance sheet which I have handed the clerk, which we would like to go in in place of the one that Mr. Bennion has prepared. It shows on the left the same—there are two columns, there is the column that Mr. Bennion shows and there is another column which shows corrections per revenue agent's report.

The Court: Are you using the exhibit numbers as you have set forth in your stipulation?

Mr. Bennion: Yes, your Honor.

The Court: So now we are talking about paragraph 8 of the stipulation. There there is a reference to Exhibits 16 and 17, but this matter we are discussing now concerns only 16, is that right?

Mr. Bennion: That is correct.

I may say for the court's information Exhibit 16 as offered by the plaintiff is a copy of the balance sheet as it existed on December 31, 1941, which was four days after the death of the decedent.

The exhibit which I understand Mr. McHale would like to offer also is one which was prepared by a revenue agent, and it was first submitted to the taxpayers on December 30, 1942, more than a year later, and after our transaction had already occurred. [7]

The principal difference between the two, I may say, is that the agent came in and set up certain equipment on the balance sheet which had been charged to expense on the books, so he increased the net assets by about $47,000, due to this equipment, and made the determination that the equipment should be written off over a two-year life, 1942 and 1943.

We take the position that the arbitrary determination, after our events took place, is wholly immaterial and does not affect what these five plaintiffs' purchased.

The Court: Is there any reason why we can't have both exhibits in evidence with a proper statement identifying what they are?

Mr. McHale: I think not, your Honor, if you

will accept both of them, so that we are not bound by 16 and he is not bound by A.

The Court: Is that satisfactory?

Mr. Bennion: We do not disagree that the agent came in and did that, but we——

The Court: In other words, so that the record will show what we are talking about, Exhibit 16 for identification is offered by the plaintiff, and it is the balance sheet that plaintiff contends represented a true statement of the assets and liabilities as of December 31st, '41 for H. S. Anderson Company, the California partnership—is that right?

Mr. Bennion: That is correct, according to the books. [8]

The Court: And it is your contention with reference to that that your later transactions, including the settlement with the estate of the widow, were made partly on the basis of this balance sheet?

Mr. Bennion: That is correct.

The Court: Now the Government has Exhibit A which they propose to offer, which the Government contends is a Treasury auditor's analysis of what the assets and liabilities were as of that date?

Mr. McHale: Yes.

Mr. Bennion: We have no objection, with the understanding that that was made after our settlement agreement was entered into.

The Court: Is it stipulated that this was made at a date after December 11, 1942, which was the date of the settlement agreement, Exhibit 2?

Mr. McHale: Yes.

The Court: All right. Then Exhibits 1 to 17 are

received into evidence, including Exhibit 16, of course; and Defendant's Exhibit A is received into evidence.

(The documents, marked Plaintiff's Exhibits 1 to 17, inclusive, and Defendant's Exhibit A, for identification, were received in evidence.)

PLAINTIFF'S EXHIBIT No. 2

Agreement

This Agreement, made and entered into this 11th day of December, 1942, at Los Angeles, California, by and between Orien H. Anderson, hereinafter called "Mrs. Anderson"; H. S. Anderson, Jr., Administrator of the Estate of H. S. Anderson, deceased, hereinafter called "Administrator"; H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson, hereinafter called "Anderson's Sons"; and Orien H. Anderson, as Guardian of the person and estate of William Todd Anderson, a minor, hereinafter called "Guardian," all of the County of Los Angeles, State of California.

Witnesseth:

The parties hereto hereby make the following declarations and admissions:

A. That H. S. Anderson died intestate in the County of Los Angeles, State of California, on the 27th day of December, 1941, leaving as his heirs, Mrs. Anderson, who is his widow, his three adult sons referred to as Anderson's Sons, and his son

Plaintiff's Exhibit No. 2—(Continued)

William Todd Anderson, a minor. These four sons being his only children.

B. That on the 19th day of February, 1942, in a proceeding entitled "In the Matter of the Estate of H. S. Anderson, deceased, etc., No. 210-180, in the Superior Court of the State of California, in and for the County of Los Angeles," Administrator was appointed administrator of the Estate of H. S. Anderson, deceased, and ever since that date has been, and now is the duly appointed, qualified and acting Administrator of said estate.

C. That on the 9th day of February, 1942, in the matter entitled "In the Matter of the Guardianship of the Person and Estate of William Todd Anderson, A Minor, No. 211354, in the Superior Court of the State of California, in and for the County of Los Angeles," Guardian was appointed Guardian of the person and estate of said Minor.

D. It is the purpose and intention of the parties hereto by this agreement to settle certain controversies and differences which have heretofore existed between them relative to the extent and character of the Estate of H. S. Anderson, deceased, to provide money for the payment of the obligations of said estate and to expedite the distribution of said estate to the heirs of said deceased as herein provided.

Now, Therefore, for valuable consideration received by each of the parties hereto and the further consideration of the promises and agreements by

Plaintiff's Exhibit No. 2—(Continued)

each of the parties hereto to be performed, it is agreed as follows:

1. This agreement and all of the declarations, admissions and undertakings hereof shall be conditioned upon (1) the approval thereof as to the undertakings and agreements of Administrator by the Superior Court of the State of California in and for the County of Los Angeles, and (2) the approval thereof as to the undertakings and agreements of Guardian, as guardian of the person and estate of William Todd Anderson, a minor, by the Superior Court of the State of California, in and for the County of Los Angeles. In the event the said Court shall not make and enter its orders approving the said agreement of said Administrator and Guardian as above, then this instrument shall be null and void and none of the parties hereto shall be bound by any of the declarations, admissions, covenants, agreements or undertakings hereof.

2. Prior to and at the time of the death of H. S. Anderson, deceased, on December 27, 1941, he was a member of a copartnership consisting of himself and his son, H. S. Anderson, Jr., in which H. S. Anderson, deceased, owned a 75% interest, and H. S. Anderson, Jr., a 25% interest of said copartnership. The business of said copartnership consisted of all of the enterprises then carried on and now being carried on in the States of California and Nevada. Prior to and at the time of the

Plaintiff's Exhibit No. 2—(Continued)

death of H. S. Anderson, deceased, the business of said copartnership was conducted under the name of "H. S. Anderson"; and subsequent to the death of H. S. Anderson, deceased, said business has been conducted in part under the name of "Anderson Bros. Supply Co. of Nevada." The said copartnership will herein be referred to as "The California Partnership."

3. Prior to and at the time of the death of H. S. Anderson, deceased, he was a member of a copartnership consisting of himself and Anderson's Sons, in which H. S. Anderson, deceased, owned a 40% interest, Robert W. Anderson owned a 30% interest, John Hardy Anderson owned a 20% interest, and H. S. Anderson, Jr., owned a 10% interest. The business of the said copartnership consisted of all of the enterprises then carried on and now being carried on in the Territory of Alaska. The business of said copartnership has been and now is being carried on under the name of Anderson Bros. Supply Co. of Alaska. The said copartnership will hereinafter be referred to as the Alaska Partnership.

4. Prior to and at the time of the death of H. S. Anderson, deceased, he was a member of a copartnership consisting of himself and W. D. Anderson, in which H. S. Anderson, deceased, owned a 50% interest and W. D. Anderson owned a 50% interest. The business of the said copartnership has been and now is being carried on under the name of Anderson Bros. Supply Co. of Texas. The said co-

Plaintiff's Exhibit No. 2—(Continued)

partnership will hereinafter be referred to as "The Texas Partnership."

5. The parties hereto have investigated and it is agreed that the interest of H. S. Anderson, deceased, at the time of his death, in the foregoing partnerships and his other property was as follows:

(a) In the California Partnership, a 75% interest, which interest was the separate property of H. S. Anderson, deceased;

(b) In The Alaska Partnership, a 40% interest thereof, which interest was the community property of H. S. Anderson, deceased, and Mrs. Anderson;

(c) In The Texas Partnership, a 50% interest thereof, which interest was the community property of H. S. Anderson, deceased, and Mrs. Anderson;

(d) That all other property of H. S. Anderson, deceased, was his separate property (except only the proceeds of the policies of insurance on his life hereinafter more particularly referred to).

6. H. S. Anderson, Jr., as surviving partner of The California Partnership, in full satisfaction and discharge of all claims of the estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of said H. S. Anderson in his lifetime and that his estate has acquired since his death in and to the California Partnership, hereby agrees to pay into the estate of H. S. Anderson, deceased the following sums of money:

(a) The sum of $75,000.00, representing, as the

Plaintiff's Exhibit No. 2—(Continued)

parties hereto agree, the fair market value at date of the death of the decedent, of his interest in said California Partnership;

(b) The sum of $228,369.32, representing, as the parties hereto agree, the estate's share of the profits of The California Partnership from date of the death of the decedent, December 27, 1941, to the date of this agreement.

It is further agreed that said Administrator shall apply to the Superior Court of the State of California in and for the County of Los Angeles, in the Matter of said estate, for its order authorizing the acceptance of said sums by him as such Administrator in full consideration and discharge of said surviving partner and said payments shall be made by said surviving partner to said Administrator forthwith upon the entry of the said order approving and confirming the same.

7. The Administrator shall apply to the Superior Court of the State of California, in and for the County of Los Angeles for its order, and the other parties hereto hereby consent that the entire sum of $228,369.32 (representing the estate's share of the profits as heretofore agreed), received by the Administrator on account of said claim against the surviving partner of The California Partnership, forthwith and prior to December 26, 1942, to distribute and the same shall be distributed to the heirs at law of said H. S. Anderson, deceased, as separate property of said decedent, that is to say, one-third (1/3) thereof to Mrs. Anderson and one-

Plaintiff's Exhibit No. 2—(Continued)

sixth (1/6) thereof to each of Anderson's Sons and the Minor Son. It is further agreed that each distributee thereof shall pay his or her own respective income taxes thereon.

8. H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson, as surviving partners of The Alaska Partnership, in full satisfaction and discharge of all claims of the estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of H. S. Anderson in his lifetime and that his estate has acquired since his death in and to The Alaska Partnership, hereby agree to pay into the estate of H. S. Anderson, deceased, the following sums of money:

(a) The sum of $50,000.00, representing, as the parties hereto agree, the fair market value at date of death of the decedent of his interest in said Alaska Partnership;

(b) The sum of $38,000.00, representing, as the parties hereto agree, the estate's share of the profits of The Alaska Partnership from date of the death of the decedent, December 27, 1941, to the date of this agreement.

It is further agreed that said Administrator shall apply to the Superior Court of the State of California, in and for the County of Los Angeles, in the matter of said estate, for its order authorizing the acceptance of said sums by him as such Administrator in full consideration and discharge of said surviving partners and said payments shall be made

Plaintiff's Exhibit No. 2—(Continued)

by said surviving partners to said Administrator forthwith upon the entry of the said order approving and confirming the same.

9. It is agreed that the fair market value at date of death of the estate's interest in The Texas Partnership was the sum of $500.00, and that Mrs. Anderson will pay the estate this amount for all of the estate's claim in and to said Texas Partnership; it is further agreed that the estate's interest in the profits of The Texas Partnership from date of death to the date of this agreement is $19,000.00, which sum is to be paid into the estate immediately by Anderson's Sons.

10. It is understood and agreed that in addition to its interest in the said copartnerships, the estate owns the residential property described as follows, which is separate property:

> Lot 4, Block 4, Trace 9745, in the County of Los Angeles, State of California, as per map recorded in Book 141, Pages 93-96, of Maps, in the Office of the County Recorder of said County.

and that said property is inventoried and appraised, together with furnishings, at the sum of $45,000.00. It is understood and agreed that Anderson's Sons will, within 90 days from date hereof, purchase said property from said estate, and the estate shall sell the same to Anderson's Sons, for the total sum of $45,000.00, which will be paid into the estate when the sale is approved by the Court.

Plaintiff's Exhibit No. 2—(Continued)

11. It is recognized and agreed by all of the parties hereto that at the date of death of decedent, The California Partnership was obligated for advances made by H. S. Anderson, deceased, in the amount of $29,013.36.

It is further understood and agreed that the said sum of $29,013.36, owed to the decedent at the date of his death by The California Partnership was community property and that the same shall be paid into the estate by the surviving partner, H. S. Anderson, Jr.

12. It is agreed that out of and from the moneys paid into said estate, exclusive of the said sum of $228,369.32, as above specified, there shall be paid all of the costs of administration, attorneys' fees, claims, taxes, and advances made to the estate, and the balance thereof shall be distributed; all such payments and distributions to be made in accordance with Schedule "1" attached hereto and made a part hereof, such distribution to be made on or before June 30, 1943.

13. It is agreed by all the parties hereto that Mrs. Anderson shall be paid from the estate of H. S. Anderson, deceased, a total family allowance of $25,000.00. Mrs. Anderson agrees that she has heretofore received payment of $13,000.00 thereof, and there remains a balance of $12,000.00, which shall be paid to her on or before April 1, 1943.

14. It is agreed that all the parties hereto will make, join in and/or approve all applications, peti-

Plaintiff's Exhibit No. 2—(Continued)

tions and instruments of every kind or character to the probate Court, or otherwise, proper, convenient or necessary for distribution to the various parties hereto in accordance with the terms hereof and of Schedule "1" which is attached hereto, and in all respects to effectuate the terms and provisions of this agreement.

15. (a) It is understood and agreed that the insurance premiums paid by decedent during marriage of himself and Orien Anderson on the policies of insurance totaling $175,000.00, payable to Anderson's Sons, were paid out of separate property and no part of said policies or the proceeds therefrom constitute community property.

(b) It is also understood and agreed that the insurance premiums paid by decedent on the policy of insurance totaling $50,000.00, payable to Todd Anderson, were paid out of separate property and no part of said policy or the proceeds therefrom constitutes community property.

(c) It is understood and agreed that the premiums paid by the decedent on the policy of insurance totaling $75,000.00, payable to Orien Anderson, were paid out of community funds and that no part of said policy or the proceeds therefrom constitutes separate property.

(d) It is also understood and agreed that the premiums paid by decedent on the annuity policy of $42,478.23, wherein H. S. Anderson, Jr., and Orien Anderson are equal beneficiaries, were paid partly out of separate and partly out of community funds;

Plaintiff's Exhibit No. 2—(Continued)

and that the sum of $23,452.92 derived or to be derived from said policy constitutes community property and the sum of $19,025.31 constitutes separate property.

16. All of the parties hereto, as to all matters herein, waive the provisions of Section 583 of the Probate Code restricting the right of the Administrator to purchase property of the estate, and expressly consent that the sales may be made by the Administrator of the estate to himself as in this contract provided for, and hereby ratify and approve such sales.

17. All the parties hereto agree that the real property and the improvements thereon, said real property being described as follows:

> Lots 65 and 66, in the Industrial Center Tract, in the County of Los Angeles, State of California, as per map recorded in Book 12, Page 101, of Maps, in the office of the County Recorder of said County.

and also the shares of stock of Douglas Oil & Refining Corporation, although in the record name of H. S. Anderson, are in reality the property of The California Partnership, and all parties hereto will join in such proceedings as may be proper, convenient or necessary to effectuate quieting title to that effect.

18. All of the parties hereto have had access to all of the books and records of the various copartnerships by their accountants and attorneys, and

Plaintiff's Exhibit No. 2—(Continued)

this agreement is entered into freely and voluntarily, based upon an examination of said books and records, and is not induced by any representation of any of the parties to the other.

19. Anything in this agreement to the contrary notwithstanding, it is understood and agreed that this agreement shall not become effective unless the Court approves this contract in every respect and issues its order distributing to the heirs on or before December 26, 1942, the said sum of $228,369.32.

20. The distribution of the profits of $228,-369.32 hereinabove referred to shall be made in the year 1942, and distribution herein provided to be made other than the distribution in 1942 of said profits shall be made to the heirs on or before June 30, 1943.

21. It is understood and agreed that Anderson's Sons will pay and discharge any and all liabilities of the estate of H. S. Anderson, deceased, in addition to those set forth in Schedule "1," and that they will pay, and hold and save harmless Mrs. Anderson and the Minor Son from, any and all such additional liabilities which they may be liable for as the result of having received the distributions from the estate as herein agreed upon.

It is further understood and agreed that Anderson's Sons will pay and discharge any and all liabilities for additional income taxes assessed against Mrs. Anderson and the heirs prior to 1942, and for

Plaintiff's Exhibit No. 2—(Continued)

any additional income taxes for 1943 over and above those set forth in Schedule "1."

To secure the liabilities herein assumed, the said Anderson's Sons will make, execute and deliver a good and sufficient first trust deed upon the residence property being purchased by them in accordance with paragraph 10 hereof. In the event that some higher bidder purchases said property from the estate, they will increase the amount of the surety bond hereinafter referred to from $30,000.00 to $50,000.00. Said first trust deed shall provide that Anderson's Sons shall have the right to sell said house free and clear of said deed of trust, provided that in the event of such sale the surety bond hereinafter referred to shall be increased from $30,000.00 to $50,000.00.

It is agreed that as further security said Anderson's Sons will procure and deliver to Mrs. Anderson and the Minor Son the surety bond written by a company authorized to issue Court surety bonds in Los Angeles County, which said surety bond by its terms shall secure the full payment of any liabilities referred to in this paragraph and shall be in the amount of $30,000.00.

22. In addition to the property set forth in paragraph 17 hereof, there is also a certain oil lease in Ventura County and certain Puett Starting Gate Company stock which is in the name of H. S. Anderson, deceased, but which is the property of the California copartnership and which is to be handled as provided for in said paragraph 17.

Plaintiff's Exhibit No. 2—(Continued)

In Witness Whereof, the parties hereto have executed this agreement the day and year first hereinabove written.

/s/ ORIEN H. ANDERSON.

/s/ H. S. ANDERSON, JR.,
Administrator of the Estate of
H. S. Anderson, Deceased.

/s/ H. S. ANDERSON, JR.,

/s/ ROBERT W. ANDERSON.

JOHN HARDY ANDERSON,

By /s/ CYNTHIA BEAL,
His Attorney-in-Fact.

/s/ ORIEN H. ANDERSON,
As Guardian of the Person and Estate of William Todd Anderson, a Minor.

Admitted in evidence January 28, 1954.

PLAINTIFF'S EXHIBIT No. 16

H. S. Anderson Co.

Balance Sheet

As of December 31, 1941

Assets:		
Cash	$ 18,832.62	
Accounts receivable	29,622.99	
Anderson Brothers Supply Co. of California	1,101.39	
Anderson Brothers Supply Co. of Nevada	14,940.55	
Inventory	51,187.82	
Investment—		
Puett Elect. Starting Gate	2,000.00	
Real Estate—1281 E. 6th	5,071.70	
Douglas Oil Co.—stock	5,000.00	
U. S. Defense Bonds	7,500.00	
Equipment	24,088.30	
Office	8.34	
Douglas & Cal Ship	8,928.47	
Prepaid expense	862.55	
Due from:		
Orien Anderson	1,000.00	
Estate of H. S. Anderson	1,788.61	
H. S. Anderson, Jr.	3,083.99	
Total Assets	$137,352.09	
Less Depreciation Reserve	21,665.94	$115,686.15
Liabilities:		
Accounts payable	$ 5,216.87	
Notes payable	34,163.18	
Script	1,691.50	
H. S. Anderson	29,013.26	
J. H. Anderson	18,663.23	
R. W. Anderson	26,938.11	
Total Liabilities		$115,686.15
Net Worth		None

Admitted in evidence January 28, 1954.

PLAINTIFF'S EXHIBIT No. 17

Anderson Bros., Supply Co., of Alaska

Balance Sheet
As of December 31, 1941

Assets:		
Cash	$ 2,824.15	
Accounts receivable	20,200.36	
Inventory	29,130.37	
Prepaid items	1,743.75	
Claims pending	1,091.59	
Equipment	57,873.09	
Buildings	18,125.45	
H. S. Anderson, Inc.	3,008.00	
Total Assets		$128,348.46
Liabilities:		
Accounts payable	$ 360.00	
Trade books	354.35	
Bad debt reserve	1,289.81	
Depreciation reserve	27,747.56	
Capital:		
H. S. Anderson	39,438.70	
H. S. Anderson, Jr.	9,859.67	
J. H. Anderson	19,719.35	
R. W. Anderson	29,579.02	
Total		$128,348.46

Admitted in evidence January 28, 1954.

H. S. Anderson Co.
Balance Sheet
as of 12/31/44

	Books	dr	cr.	Corrected
	<18832.62>			<18832.62>
nts receivable	29622.99			29622.99
.Co. of Cal.	1401.39	2531.15	2519.89	1212.65
Co. of Nevada	14940.55			14940.55
nlory	51187.82			51187.82
limited Puett Elect. Station, Gate	2000.00			2000.00
-Real estate-128.86	507.70			507.70
Douglas Oil Co. stock	5000.00			5000.00
U.S. Refund Bonds	7500.00			7500.00
pment	240883.30	1032.56		1273.16
e	8.34			8.34
lar & cal ship	8928.47			8928.47
aid expense	862.55			862.55
ed cost of acquisition	1000.00			1000.00
Total	13247.99			23582.71
unts payable	521.87			521.87
payable	341.63			341.63
ost	169.50			169.50
tal: H.S. Anderson	2901.326	2519.89	6778.70	7161.91
-Estate of H.S. Anderson	<1788.67>			<1788.67>
-H.S. Anderson Jr.	<308.399>		488.57	180.75
-J. H. Anderson	1866.23			1866.23
R.W. Anderson	2693.11			2693.11
ciation reserve	2166.94		5587.93	7753.87
Total	13247.99	15374.70	15374.70	23582.71

To adjust books to return & P.&L. in accordance
ed P.&L. dated 12/30/44

Case No.
vs.
EXHIBIT
Date No. IDENTIFICATION
Date No. A IN EVIDENCE
Clerk, U. S. District Court, Sou. Dist. of Calif.
Deputy Clerk

Mr. McHale: I don't know whether the clerk has exhibits 18 and 19. [9]

The Clerk: No, I do not.

Mr. McHale: We didn't have sufficient copies made of this.

You don't have an extra one, do you?

Mr. Bennion: No, I don't have an extra copy of those two.

Mr. McHale: These are the only copies that I have, if they may be introduced and withdrawn for the purpose of substituting photostats at some future time.

The Court: You may withdraw them at a later time to substitute photostats.

Is this 18 and 19 referred to in the stipulation?

Mr. McHale: Yes.

The Court: 18 and 19 received in evidence.

(The documents referred to were marked Plaintiff's Exhibits 18 and 19, and were received in evidence.)

Mr. Bennion: Your Honor, there are two other exhibits which the plaintiffs would like to offer, which are not designated in the stipulation. As No. 20, a petition for approval of the contract of December 11, 1942.

The Court: Petition to the Probate Court?

Mr. Bennion: Yes, your Honor.

The Court: Received into evidence as Exhibit 20. [10]

(The document referred to was marked Plaintiff's Exhibit 20 and was received in evidence.)

Mr. Bennion: And as the next exhibit, a copy of the order of the Probate Court approving the contract.

The Court: Exhibit 21 received in evidence. Order approving contract of December 11, 1942.

(The document referred to was marked Plaintiff's Exhibit 21, and was received in evidence.)

Mr. Bennion: If your Honor please, perhaps it would help if I just briefly indicated what we regard as the significance of these various documents.

The Court: All right.

Can I have them in front of me as you go ahead?

Mr. Bennion: The first exhibit is a copy of the written partnership agreement of the Alaska partnership, which existed prior to the date of the decedent's death. I think the only significance of that from our standpoint is that it contains no provision for the continuance of the partnership after the death of a partner.

The Court: You say it contains no provision?

Mr. Bennion: Contains no provision.

The Court: And your pretrial stipulation provided that the oral partnership agreement for the California partnership had, likewise, no provision for continuance after date of death? [11]

Mr. Bennion: That is correct, your Honor.

The Court: All right.

Mr. Bennion: Exhibit 2, your Honor, is the agreement of December 11, 1942, in which the parties agreed regarding the interests in these partner-

ships and the value of the decedent's interest in each, and it contains the obligations to purchase or make these payments into the estate.

I should like to call your Honor's attention particularly to paragraph 11 of Exhibit 2 on page 7, where it is stated that the California partnership at the date of the death of the decedent was obligated for the advances made by the deceased in the amout of $29,013.36.

It goes on to provide, "that the same shall be paid into the estate by the surviving partner, H. S. Anderson, Jr."

If your Honor will refer to Exhibit 16 and Exhibit A, on Exhibit 16 that item of $29,012.36 is shown as a liability in accordance with this contract, because the sum of that liability was paid into the estate in addition to this $75,000.

The Court: Let me see this just a minute.

(Slight delay in proceedings.)

The Court: That is the item which is referred to under assets as an account receivable in 16?

Mr. Bennion: No. It is under liabilities, your Honor. The fourth liability, H. S. Anderson, $29,-013.26.

The Court: And it appears, also, does it, in Government's [12] Exhibit A?

Mr. Bennion: In Exhibit A, your Honor, that is one of the things we complain about in Defendant's Exhibit A, the fact that the item of—if your Honor will notice about in the middle of the page of Exhibit A, "Capital—H. S. Anderson $29,-

013.26," in the first column would appear to be capital rather than a liability.

I call that to the court's attention because under this agreement the twenty-nine thousand was treated as a liability and was repaid to the estate, in addition to which $75,000 was paid to the estate.

The Court: All right.

Mr. Bennion: Exhibits 3, 4, 5, and 6 are the new limited partnership agreements between the two plaintiffs.

Let me take up, for example, Exhibit 3, which is the limited partnership forming the new partnership to carry on the business in California and Nevada. Now, the five partners had varying interests in that partnership and contributed varying sums of capital to carry on the partnership. On the same day there was entered into, which was December 23, 1942, the five plaintiffs entered into a contemporaneous agreement, which is Exhibit 5, which refers to the coincidental execution of a limited partnership agreement, and goes on to provide various provisions, which we think are immaterial here, except that the very last paragraph of [13] Exhibit 5, on page 3, is to this effect:

> "It is agreed that this partnership shall and it hereby does agree to carry on the business of and to assume all of the contracts, debts, and obligations of the former partnerships known as H. S. Anderson, H. S. Anderson Co., and Anderson Brothers Supply Company of Nevada."

Now, the significance of that, your Honor, is that under that language these five partners stepped in and paid this $75,000 to the estate, and it was so charged on their capital accounts in this new partnership.

That is to answer the Government's point that only H. S. Anderson, Jr., had this obligation. In other words, it was expressly assumed by these various five plaintiffs, and paid by them in their relative proportions in the new partnership.

The Court: Now, that $75,000 was provided for in the agreement of 12/10——

Mr. Bennion: 12/11——

The Court: '42?

Mr. Bennion: That is correct.

The Court: And that agreement was signed by them as individuals?

Mr. Bennion: That is correct.

The Court: So they incurred an obligation, did they not, as individuals when they signed the agreement of 12/11/42? [14]

Mr. Bennion: The agreement of 12/11/42 reads that H. S. Anderson, Jr., as a surviving partner agrees to pay $75,000.

There is no obligation there on the part of the other four plaintiffs.

Now, in connection with the Alaska partnership the agreement of 12/11/42 reads that the three surviving sons agree to pay in $50,000. So that in that agreement there was no obligation on the part of the two wives with respect to either partnership, nor was there an obligation with respect to two of

the sons in connection with the California partnership; but the evidence will show that it was their intent to carry on this business the way they, in fact, did carry it on, and that under this agreement, Exhibit 5, they each assumed their pro rata portion of the obligations which had been created by that contract of December 11, '42.

The Court: Does the Government contest that position?

Mr. McHale: I think as a matter of law that H. S. Anderson, Jr., became fully obligated, as a surviving partner he paid $75,000 for his deceased father's interest in the firm and he ends up as the sole proprietor. Then what is the later arrangement? Later he brings his brothers and wife and sister-in-law into the partnership. But H. S. Anderson, Jr., at the execution of this agreement with the estate and the three brothers on the Alaska partnership acquire all the assets. What later arrangements they make, that is a capital [15] contribution of the others to get in the partnership, and they acquire interests in the partnerships. That is the Government's contention. And those capital interests are capital interests and not interests in any particular assets.

The Court: Exhibit 3 forming the H. S. Anderson Campany partnership, although it states the percentage in which the general partners will share, it does not state their contributions to the partnership, does it?

Mr. Bennion: I have forgotten, your Honor, whether it is that agreement or the contemporane-

ous one, Exhibit 5, in which they agree to contribute. I can't put my finger on that right now, your Honor, but the purpose and the way it was actually handled on the books was that they each contributed whatever assets there were in the business, and were charged in these proportions with their share of the assets so contributed.

The Court: The only thought that goes through my mind is that makes sense as to H. S. Anderson, but Robert Anderson had had no interest in the California partnership prior to the death of his father—is that right?

Mr. Bennion: That is correct. He had certain—what actually happened, your Honor, is that the profits of the Alaska partnership had been in effect brought down and loaned to the California partnership for working capital, and so each of these other three, John and Bob, were each creditors [16] of the California partnership. So they had, if your Honor will look at Exhibit A—the agent set up a capital account there of John Anderson $18,663.23, and for Robert $26.938.11. Actually those amounts were treated on the books and between the parties as advances by these two boys to the California partnership, for which the California partnership was obligated. When the new partnership started they just merely continued the business, the old, and the partnership accounts were all charged and credited so that each partner in effect contributed the amount of capital which the agreement called for.

The Court: But John didn't go into this new California partnership, did he?

Mr. Bennion: Yes, he went in to the extent of a one-third interest, on Exhibit 3.

The Court: Oh, yes. It wasn't exactly a one-third interest. It is shown on page 3 of Exhibit 3.

Mr. Bennion: Excuse me. It is a one-quarter interest.

Mr. McHale: A one-quarter interest.

The Court: All right. Go ahead.

Mr. Bennion: Exhibits 7 and 8, if your Honor please——

The Court: First, 4 and 6 are similar agreements, are they? Or are you going to take them up later?

Mr. Bennion: No, I neglected to state those are similar with respect to the Alaska operations, with respect to 3 and 5 [17] that we have discussed regarding California.

The Court: All right.

Mr. Bennion: Now, Exhibits 7 and 8 are the documents whereby these two new limited partnerships created at the end of 1942 were dissolved and canceled as of the close of business on December 31, 1943, by mutual consent and agreement.

Those documents, as they indicate, were actually dated June 30th, 1944.

Now, in our stipulation, your Honor, beginning at the top of page 3 in paragraph 6, we have listed——

The Court: And as to Exhibit 7 and Exhibit 8, although these are only typewritten copies, it is

stipulated they may be used in lieu of the originals?

Mr. McHale: Yes, your Honor.

The Court: Now what were you saying, counsel?

Mr. Bennion: Let me correct my statement.

At the bottom of page 2 of the stipulation in paragraph 5 we stipulate that the only activity of the Alaska partnership on the date of death was in connection with the construction of the air base at Anchorage, Alaska, pursuant to a contract dated July 24, 1940, and a copy of that contract is Exhibit 9.

That is the basic contract under which the Alaska partnership operated for a year and a half preceding the death of the decedent and for a little over two years after. [18]

I may call your Honor's attention to the bottom of page 4 of our stipulation where there is the agreement of counsel that the useful economic lives of the various contracts mentioned here were two years from and after December 31, 1941. In other words, these were construction contracts, and the subsistence activities of the partnerships were expected to have a life commensurate with the lives of those construction contracts.

Mr. McHale: Your Honor, I don't want to be too technical, but that was the estimate made by the revenue agent for the purpose of computing the depreciation of physical equipment.

Now, it is part of the Government's contention that you have to look at the contracts or purchase orders, or whatever they are, in some cases they are not even contracts, that is part of the Government's

contention, because I understand it is part of plaintiff's contention that the consideration was paid for a specific contract, and part of the Government's defense is that with respect to some of these, at least, there were no contracts in existence, there were agreements which could be terminated at any time. The purpose of putting in this paragraph here, I think, was to save some proof here as to the extent—the utmost extent of the life of some of these contracts. And I think the purpose, if the court sees it, is just to see that the revenue agents or the Commissioner [19] had determined for physical depreciation two years was a reasonable life.

The Court: If the court, for instance, decides that Exhibit 9 was a contract and was a valuable contract, and was such a kind of property that it should have been depreciated over a period of time, then under this stipulation the Government would concede that the years '42 and '43 would be the years that it would be depreciated?

Mr. McHale: Yes, if the court decided that. But if it decided it was not a contract, it would not bind them.

The Court: I understand.

Mr. Bennion: Now, Exhibits 10, 11, and 12, are the contracts which existed on the date of death between the California partnership and the Camp San Luis Obispo, Camp Roberts, and California Shipbuilding yards.

The Court: And again it is stipulated that copies are used in lieu of the originals?

Mr. Bennion: Yes, your Honor.

Mr. McHale: Yes, your Honor.

Mr. Bennion: Now, those are significant as the evidence will bring out later, your Honor, in that in their starting dates and their provisions for termination, I believe each of those contracts is terminable—for example, Exhibit 11 on page 2, contains a provision whereby Camp Roberts can terminate the agreement in writing at any time within sixty [20] days; Exhibit 10 contains a provision permitting them to terminate on 30 days notice; and Exhibit 12 has a termination option on the part of the California Shipbuilding yards of 48 hours.

The next exhibit is Exhibit 13, which comprises many documents, and those are the purchase orders obtained, the first four just shortly before the decedent died, from Basic Magnesium, and most of our evidence will center on those.

Perhaps I had better leave it to the evidence to explore the significance of the purchase orders, because they were very substantial business, and the evidence will show that those and also other contracts were——

The Court: 13 is part of the business of the California partnership before the death of the deceased?

Mr. Bennion: That is correct.

The Court: And did that partnership set up dining rooms and dormitories, and things of that sort?

Mr. Bennion: That is correct.

The Court: Was the operation, do you know, somewhat similar to the operation up at the Anaconda place?

Mr. H. S. Anderson, Jr.: Yes, Judge, on a much larger scale. The Darwin mines is a smaller operation.

The Court: But very comparable?

Mr. H. S. Anderson, Jr.: Yes.

The Court: That doesn't mean anything for the record, [21] because you will have to make the record, but it will help me considerably, because I spent some time on that.

Mr. Bennion: Yes.

The Court: Do you want to postpone that until you take some evidence?

Mr. Bennion: Yes.

Now, Nos. 14 and 15 are the agreements between the partnership and Basic Magnesium, Inc., and the release. Until they were executed in 1943 the partnership operated only under these purchase orders which are Exhibit 13. Exhibits 14 and 15 are put in merely to show the full picture of what transpired under that business.

Exhibit 16 is the balance sheet at the date of death, which we have heretofore discussed, and I call your Honor's attention to the fact that on the date of death there were no tangible assets on the books representing the decedent's equity in this business.

The Court: All right.

Mr. Bennion: Exhibit 17 is a similar balance sheet for the Alaska partnership at the date of death, and your Honor will observe that the decedent had a capital account in that partnership of $39,438.70 at the date of his death.

Exhibits 18 and 19 are the audit reports of the revenue agent who came in and made his examination after the death of the decedent and wrote up his report. His report is dated, [22] as you will see on the front page of both Exhibit 18 and 19, December 13, 1942, or nineteen days after the agreement of December 11th, and these are the reports that set up the useful life of the equipment on a two-year basis at the end of 1941, and which therefore increased the income in the case of the California partnership, which is Exhibit 18, increased the income rather substantially for 1939 and '40 and '41.

And I may say by virtue of that determination rather substantial deficiencies in income tax were assessed and had to be paid by these five plaintiffs after this agreement was drawn up.

So that we take the position, if your Honor please, first that this setting up of equipment is immaterial, as I have heretofore stated, because it took place after these negotiations and after arriving at the value of $75,000, which value was placed, in the absence of any such increase, on the equipment schedule; and in the second place, the partners here —it does not change the fact that what they purchased and what they paid for was the income to be derived from these contracts, because they derived no benefit from this equipment that was set up subsequently by the agent.

Your Honor will remember that at the pretrial hearing we came in and made the statement that we were not seeking any duplication of deductions,

and although when the original returns were made out by these five individuals the full amount [23] of $75,000 and $50,000, and also some other items, were deducted, on our further examination we had ascertained that in so far as the Alaska partnership is concerned, since there were $39,000, roughly, of tangible assets belonging to the estate, that these taxpayers got the benefit of that taxwise in subsequent years, either through depreciation or through writing off inventory, or the like, so that automatically they got the benefit of a deduction of $39,000, so that in the conduct of this present case we are conceding that out of the $50,000 paid to the Alaska partnership $39,000 has, in effect, been already deducted, and we seek no double deduction, and we are limiting our claim to the difference between $50,000, and $39,438.70, or a little over $10,000.

Now, applying that same reasoning to the California partnership, as I have stated on the date of death and on the date one year later, when this agreement was entered into and when this $75,000 was negotiated, there was no net tangible asset value on the California books with respect to the decedent's interest, so that we take the position that the full $75,000, no part of it has heretofore been allowed as a deduction in any form, and that the full amount was paid for intangibles, which we think the evidence will show beyond question was the income to be derived from these specific contracts.

We take the position that the agent by coming in later—— [24]

The Court: Just a minute. Why do you call them intangibles, if you say what was to be obtained was the income from these contracts; why do you call them intangibles?

Mr. Bennion: Maybe I used the wrong term. I meant that they were paying the $75,000 for the income.

The Court: Which would be derived from contracts, purchase orders, agreements, and so forth, with these various private and government agencies?

Mr. Bennion: That is correct, your Honor. And that that actually transpired. They paid the $75,000, they carried on these businesses for two years at a terrific profit—I don't mean terrific, but their expectation of income was realized—all of which has been taxed to them, and they have not recovered taxwise their cost of $75,000 in any manner.

The Court: Do you concede the Government's contention that if the $75,000 was paid solely for good will, that it can't be recouped?

Mr. Bennion: I would have to define what good will means. I think it is a matter of principle if it was paid for something of value which would go on indefinitely in the future, that it may not be deductible.

The Court: I wouldn't make any legal definition of good will, but my present horseback view of good will is the prospect of securing business without any definite assurance. In other [25] words, if

I went into a company that was merely selling to the retail trade, had no contracts, commitments, orders, or whatever you want to call them, but just relied on the people who dropped into the shop, it would seem to me the prospect of that business continuing in the future would be good will, a part good will. Good will also includes, I suppose, intangibles, such as the outfit's reputation, the people it knows or has done business with in the past, but it all boils down to the prospect of business in the future.

Now, if there is anything concrete, I don't think it would come under the head of good will. Assume, for example, a situation where you had a written agreement signed, sealed and delivered, that over a period of five years the company was going to buy so many widgets each year for that period of time, that wouldn't be good will, that would certainly come under some other classification.

Mr. Bennion: That is what we contend is the situation here, in essence.

The Court: But I wonder if you concede the Government's position that should it turn out—assuming for argument, put it this way, that the court held that all you bought was good will, do you concede the Government's law on the good will problem, namely, that you can't write off good will?

Mr. Bennion: That's right, if you define good will as something that has an indefinite meaning. The reason I would [26] like to put that limitation in is this, your Honor: I don't think there is any magic in words. Under the tax law if a man makes

a capital expenditure, if he can by any way tie that into a number of years or a period over which he might amortize it, there is nothing in the law which will forbid him from amortizing it. In fact, it is expressly granted as a deduction. Now, good will in the sense it is indefinite and will go on forever or an indefinite time, it is true there is no period over which you can amortize it. So that to that extent I would agree, if there was that kind of good will there would be no period over which to amortize it.

The Court: I wonder if that is the right test.

Supposing a man had a shop on a corner out here in L. A., and he knew for certain that two years later in a certain month the City would come in and take his shop and put a freeway through there, so he knew he only had a definite period of, say, two years in which he could run his shop—he had been running it for twenty years, he had customers who came in day after day—therefore his good will, at least viewed from the standpoint of the location, had a definite running-out date, but does that make it terminable, I mean give it such a character that it can be charged off?

Mr. Bennion: I think anything with a definite life can be charged off, your Honor. I think that question is hard in that—— [27]

The Court: You have to have something more than a definite period of time. I have tried to give you an example of where all the fellow had was a knowledge of a definite period of time, to see if I couldn't point up the fact that it is not the definite

period of time that good will may operate that gives it a value that makes it chargeable, but isn't it the fact that there must be something more than the mere expectancy of business?

Mr. Bennion: With all due respect, I would disagree taxwise. There have been so many cases in the tax field defining good will, and it can attach to any number of things, it can attach to a location, it can attach to a name, it can attach to a driver's list of customers, anything of that nature where you have an expectation of continued patronage from the public. If there is no period over which you can say that is likely to terminate, you have no period to amortize whatever you might pay for that preference. But, on the other hand, I would say if you have a definite period, why, you certainly are entitled to amortize your investment over that period.

The Court: You know much more about it than I do, because you and Mr. McHale have been working on this case. I held a pretrial with you and discussed it with you a time or two, but I have done no research on it, and I am just merely trying to test out certain ideas. [28]

That last statement you made, supposing you bought out the Anderson business, we will say the Anderson Linen Service around town, and you bought out the linen service, and among other things bought the right to use the name "Anderson" while you conducted a linen service, would that be buying good will? There is no running-out time, you could use the name "Anderson" forever on the linen service.

Mr. Bennion: It seems to me, your Honor, it is solely a question of fact. If, as it is in this business, if I went to buy this business from the Andersons, I know nothing of the business. It depends, as I tried to point out in our points and authorities, if you have purely a personal service business, without location, where it depends on the skill and the ability of a particular individual, you do not have good will, for the simple reason that when that man dies his good will, if you want to call it that, dies with him, and no one will pay for it. And the evidence will show that that is exactly what we had here. That any success in this business was due to these particular individuals. And there are a host of cases, your Honor, in the tax field where partnerships have dissolved or corporations have dissolved where the Commissioner has come forth and asserted good will, and without exception if they find that the prosperity of the business and the genius of it lies within the personal talents and ingenuity of an individual, it is not good will which can [29] be valued, for the simple reason that you can't sell that. That is what we think was true here. They had no good will. If these particular contracts had not existed, the mere fact that these people had been carrying on a subsistence business was not an asset for which anybody would have paid any money, whether it be these individuals or third persons, or anybody, regardless of your indefinite period.

The Court: All right. We will adjourn to 2:00 o'clock. Are you practically through now? You have three or four more exhibits to cover here.

Mr. Bennion: They will be very short, your Honor.

The Court: And do you propose to offer some testimony, or to rest on the exhibits?

Mr. Bennion: We propose to offer testimony of a witness.

The Court: All right. We will adjourn to 2:00 o'clock.

(Whereupon at 12:05 o'clock p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [30]

Thursday, January 28, 1954—2:00 P.M.

The Court: All right. Let's proceed.

Mr. Bennion: Your Honor, I think we had about completed these exhibits. We were on numbers 18 and 19, which were the revenue agent's reports, and I believe that I have covered everything there that I had in mind.

Nos. 20 and 21 are the petitions for approval of the contract filed by the administrator of the decedent's estate, and the court's approval, the probate court's approval of the contract.

I may say, your Honor, that we have the testimony of Mr. Anderson, Jr., but if I might make this observation: On the returns that were filed each of these taxpayers deducted their respective shares of the $75,000 and the $50,000, and also some $60,000 of other items, which they were required to pay under this contract. Now, those were miscellaneous items. The important thing, they had agreed to

bear any income tax deficiencies that might be later assessed growing out of the partnership business for prior years. They were called upon to make rather sizable payments under that obligation, and there were other items. The Commissioner has disallowed all of the deductions, as a result of which, as alleged in the complaints, these five petitioners paid income tax deficiencies, aggregating $87,000, and they were paid early in [31] the year 1947. We are now seeking—although our claims were for the entire sum of the deficiencies paid, we are now waiving our claim to the sixty thousand some odd of other items, and we are waiving the deduction with respect to the thirty-nine thousand of assets appearing on the balance sheet of the Alaska partnership, so that the present case concerns the seventy-five thousand paid with respect to the California partnership, and a little over $10,000 paid with respect to the Alaska partnership, so that our total claim in these suits, if successful, would be for a refund of approximately $39,000, rather than the original eighty-seven thousand which was paid, or, roughly, 44 per cent.

The Court: I understand you on your waiver of the sixty thousand miscellaneous deductions, and the difference between the thirty-nine thousand and the fifty thousand item, but you are claiming the whole seventy-five thousand, are you not?

Mr. Bennion: Yes, your Honor.

The Court: You are claiming the seventy-five thousand, and a little over ten thousand on the other?

Mr. Bennion: That is correct.

The Court: You said something about thirty-nine thousand.

Mr. Bennion: The thirty-nine thousand is what——

The Court: Read the very last part of counsel's statement. [32]

> (The following portion of the record was read by the reporter: "We are now seeking—although our claims were for the entire sum of the deficiencies paid, we are now waiving our claim to the sixty thousand some odd of other items, and we are waiving the deduction with respect to the thirty-nine thousand of assets appearing on the balance sheet of the Alaska partnership, so that the present case concerns the seventy-five thousand paid with respect to the California partnership, and a little over $10,000 paid with respect to the Alaska partnership, so that our total claim in these suits, if successful, would be for a refund of approximately $39,000, rather than the original eighty-seven thousand which was paid or, roughly, 44 per cent.")

Mr. Bennion: I see your Honor's point. The last thirty-nine thousand would be the amount of the dollar refund, the tax refund.

The Court: Based on seventy-five thousand plus ten thousand?

Mr. Bennion: That's right.

The Court: If you are entitled to the refund, we would have to have it calculated, would we not?

Mr. McHale: Yes. [33]

The Court: The court wouldn't calculate it.

Mr. McHale: No. It would be calculated under Rule 7(h).

Mr. Bennion: That is correct. My only point is that although our complaints seek a judgment of eighty-seven thousand, we are in effect abandoning all but thirty-nine thousand of that claim, $39,000.

The Court: To make the record appear that you are being fair with the Government, you are only seeking forty-four per cent of what you asked originally?

Mr. Bennion: These sixty thousand dollars of deductions get into a tremendously complicated field, and we believe that they are questionable, but we think the case is complex enough without them.

The Court: All right. Thank you.

Now, do you have some witnesses that you want to call?

Mr. Bennion: Yes, your Honor. I will call Mr. Anderson. [34]

HAROLD S. ANDERSON, JR.

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Harold S. Anderson, Jr.

(Testimony of Harold S. Anderson, Jr.)

Direct Examination

By Mr. Bennion:

Q. Mr. Anderson, you are the son of Harold S. Anderson, the decedent in this case?

A. Yes, sir.

Q. And are you the plaintiff in docket No. 12044-C?

A. I am. I think there are five. Is that my number?

Q. That is your number. Let's get the relationship now of these other plaintiffs. Who is Ethel H. Anderson? A. My wife.

Q. And when were you married?

A. January 17, 1941.

Q. Who is Robert W. Anderson?

A. My brother.

Q. Is he older or younger than you?

A. Younger.

Q. By how many years?

A. By five years.

Q. How old were you back in 1941? [35]

A. I was twenty-six.

Q. Who is Gloria S. Anderson?

A. Gloria S. Anderson is my brother Bob's wife.

Q. Do you recall when they were married?

A. Yes, I do. They were married June 30, 1939.

Q. And John H. Anderson? A. A brother.

Q. Is he the youngest?

A. He is the middle brother.

Q. How old——

(Testimony of Harold S. Anderson, Jr.)

A. He is four years younger than I am. He is between Bob and myself.

Q. We have stipulated in this case that your father died on December 27, 1941. Was his death unexpected, sudden?

A. Totally unexpected. He died of a heart attack.

Q. Where were you at that time?

A. I was living at West Los Angeles. I had come down from the Basic Magnesium job at Las Vegas for Christmas, and he died on the morning of the 27th of December, two days after Christmas.

Q. How long had you been on the Basic Magnesium job?

A. For approximately, I would say, sixty days.

Q. Mr. Anderson, I will now show you Exhibit 13 here, and would you please direct the court's attention to the first four purchase orders there and indicate the type of operations [36] they called for and the dates of them?

A. Purchase order No. 211 covers the actual opening of the subsistence contract or the subsistence operation that we engaged in.

Q. Where was that located?

A. It called for the accommodation of approximately one hundred men in a dormitory that was already built called the B & G Dormitory, Boulder City, Nevada, about nine miles from the actual construction site of the Basic Magnesium plant.

The Court: That dormitory belonged to the partnership?

(Testimony of Harold S. Anderson, Jr.)

The Witness: No, your Honor, the dormitory belonged, I believe, to the Department of Water and Power. It was used in connection with the Hoover Dam construction.

The Court: Rented by the partnership?

The Witness: No, sir. The Defense Plant Corporation made an agreement with the Department of Water and Power to take that building over for housing of its employees in the initial stage of the construction at the Basic Magnesium job.

The Court: Then they let you have it on some agreement?

The Witness: They provided that building for our use.

The Court: They turned the control of the building over to you?

The Witness: That's right. [37]

The Court: And did your partnership put in the equipment, beds, mattresses, linens?

The Witness: Yes, we did. We supplied all the bedding, equipment, mattresses, linens, and certain items of furniture.

The Court: Were those items in the dormitory on December 27th, '41?

The Witness: Yes, sir.

The Court: It was completely furnished at that time?

The Witness: That's right. I made that my headquarters and my office, and I lived there.

The Court: Go ahead.

(Testimony of Harold S. Anderson, Jr.)

Q. (By Mr. Bennion): What was the date of that purchase order, Mr. Anderson?

A. Purchase order No. 211 was dated December 8, 1941.

Q. Now, can you go on to the next one?

A. The next purchase order is, also, No. 211——

Q. I think that is a change order?

A. That is a change order to the first original No. 211.

Q. Can you go on to No. 212? That is down about the sixth sheet.

A. Purchase order No. 212 is dated December 15, 1941.

Q. What did that contemplate?

A. This contemplated the initial camp construction at the actual job site for approximately 500 men.

Q. What did that entail when you say 500 men—sleeping [38] them?

A. We call them 500 rental units, based on bed occupancy.

Q. Did it also cover feeding them?

A. It also covered feeding in a building to be erected by the Defense Plant Corporation, or McNeil Construction Company, who had the general contract.

The Court: That building was for the feeding only?

The Witness: It was for feeding, general commissary——

The Court: And sleeping?

(Testimony of Harold S. Anderson, Jr.)

The Witness: No. This was merely for the feeding and what we called commissary operations.

That is rather like a general store operation.

This first number of housing units contemplated housing in tents, Army pyramidal tents.

The Court: Who was to put up the tents?

The Witness: My company was to supply all the tent canvas. The Defense Plant Corporation provided the tent frames and the tent flooring.

Q. (By Mr. Bennion): Were you to supply the mattresses and the linen?

A. Of course all the bedding, linens, all the air-conditioning units, which were desert type coolers, and individual gas heating units for each tent.

Q. Now, would you go on, Mr. [39] Anderson——

The Court: How much of your work had been done on December 27th, '41?

The Witness: With respect to this five hundred units here?

The Court: Yes. Were the tents erected or any part of them?

The Witness: No, sir, they were not yet erected, they were in the planning stage. It was part of my job to lay out the camp and set these—stake out the tent site for the erection of the tent frames.

The Court: Had you purchased any of the tent material or ordered it?

The Witness: To the best of my memory we had ordered the tent material.

(Testimony of Harold S. Anderson, Jr.)

The Court: What about furnishing sheets, mattresses, coolers, and things of that sort, do you know what the situation was as to those?

The Witness: All under order, as I recall at this time.

Q. (By Mr. Bennion): Can you proceed there to No. 213?

A. Purchase order No. 213 is dated December 16, 1941.

Q. And what did that cover?

A. That covered an additional six hundred-bed unit in this camp which originally started with five hundred.

Q. That is six hundred in addition to the five hundred on the preceding order? [40]

A. That's right. We now have a total of 1,100 contemplated occupancy.

Q. And were they the same type of——

A. Exactly the same. The first 1,800 units of this camp were in tent housing. The final 1,800 were housed in wooden temporary barracks buildings.

Q. Would you go down, then, to order No. 214?

The Court: On 213 would the situation be the same; would you say the goods and materials that you were to supply were on order?

The Witness: Yes, I can say that we had contemplated these additional units coming through, not knowing exactly then the authorization would come in the form of these purchase orders, which in effect are a contract for the job.

(Testimony of Harold S. Anderson, Jr.)

The Court: By December 27th were your goods on order that you were to supply?

The Witness: Yes, for these units covered by these purchase orders to this date.

The Court: All right.

Q. (By Mr. Bennion): No. 214, that is several pages further on.

A. Purchase order No. 214 is dated December 15, 1941. This purchase order or contract covers the initial equipping by us, our company, of what we call the mess-hall equipment, which is the equipment we provided for the kitchens, the [41] dining rooms, the commissaries, in what we call the mess-hall building, which was a central building in the camp.

Q. Mr. Anderson, would you tell the court just what organization you had up at Nevada on December 27, 1941?

A. Our only organization at that time was a custodian which I had left at the B & G Dormitory in Boulder City. "Custodian" in our business means a janitor. And at the camp site I had left a canteen manager, a man that I had hired locally, to take my place when I left for Los Angeles. So the staff at that time consisted of two men.

Q. What were you actually doing up there in the way of feeding men?

The Court: At the camp site?

Mr. Bennion: At both of these places, the B & G Dormitory and the camp site. Up to December 27, 1941.

(Testimony of Harold S. Anderson, Jr.)

The Witness: At the B & G Dormitory we were feeding nobody, we had no facility to feed at that location. At the camp site, McNeil Construction Company had erected a warehouse building, frame building, wooden building, and I had prevailed on them to take over one end of this warehouse to set up what we call a canteen, and the food that we were able to serve at that time consisted of wrapped sandwiches and bottled milk, hot coffee, and candy bars, which I would purchase at Las Vegas and drive out to the site in my car each day and set it up in this little area that we called a canteen. That is [42] all that was going on at the time, December 27th, in the way of feeding.

Q. (By Mr. Bennion): What was going on there in the way of sleeping men?

A. At the B & G Dormitory in Boulder City I would say we probably had, as I recall, perhaps 40 occupants.

The Court: And none at the camp?

The Witness: None at the camp, because the camp was actually in the initial planning stages. The tent frames hadn't yet been erected, or bath houses hadn't been built, sewer lines hadn't been laid. It was more or less on the drafting board stage.

Q. (By Mr. Bennion): How soon after your father died did you return to Las Vegas, or Nevada?

A. I would say within five days. As I recall, it was just after the first of the year, right after the first of January of 1942.

(Testimony of Harold S. Anderson, Jr.)

Q. What was your purpose in going to Nevada on that occasion?

A. Well, I would say that the purpose was twofold. I had been called by the project manager from McNeil Construction Company, Mr. Howard Mann, to naturally get back on the job as soon as possible, but to determine two things in my mind: One, as to whether or not we were going to continue on with this contract, and, No. 2, if we determined to [43] continue on with the contract, to attempt to resell McNeil Construction Company, and the Defense Plant Corporation on our ability to continue on.

There was a question in their minds, of course, whether we were——

Mr. McHale: I move to strike what questions were in their minds, your Honor.

The Court: That part may go out.

Q. (By Mr. Bennion): Did you have any conversations with the McNeil Construction official as to whether you were to go on with the contract?

A. Definitely.

Q. Will you give us the substance of that conversation?

A. As I recall it, McNeil Construction Company, being the general contractor, was obligated to continue their part of the job, and we had an important part of their job in the operation of the camp for their construction employees, and——

Mr. McHale: I move to strike his answer as not responsive, your Honor.

The Court: Overruled. Tell us now what the con-

(Testimony of Harold S. Anderson, Jr.)
versation was with the McNeil officials. Who did you talk to and what did you say and what did they say?

The Witness: As I recall, your Honor, Howard Mann, project manager for McNeil, and myself and my father-in-law, Thomas Hamilton, discussed the feasibility of going on, our [44] ability to go on, and as I recall the conversation, we convinced them that we could go on, if McNeil or the Defense Plant Corporation would concede a matter of some $60,000 worth of equipment, air conditioning equipment, that we were obligated under our purchase orders or contracts to supply. And, as I recall the conversation, Mr. Mann was able to say, "Well, we will absorb that cost, and you take care of the other obligation that you have under these purchase orders."

Q. (By Mr. Bennion): Did you decide right then that you would go forward with the contract?

A. I would say that that concession on Mr. Mann's part was the thing that enabled me to say, "Yes, we will go on with the contract," providing, of course, that they wanted us to go on with the contract. At least I was convinced about that time that we would go on with it.

Q. Before you had that conversation did you talk the matter over with your brother, Bob?

A. I did. He was at the time working at the Douglas Aircraft plant cafeteria at Long Beach, where we were operating, and at the California Shipbuilding yards at Terminal Island, where we

(Testimony of Harold S. Anderson, Jr.)
were also operating, and I consulted with him on what his wishes were or ideas were on whether or not we would continue on or not, and on what basis.

Q. Why did you consult him?

A. Well, first of all, he was a partner of mine in the [45] Alaska partnership; and, secondly of all, I naturally contemplated, had worked out with him a new partnership I had hoped to continue on and attempt to operate these contracts.

Q. Well, did you intend to carry on this California or Nevada operation by yourself, or with your brothers as partners?

A. Never contemplated by myself. My brothers were always included in any thinking that I had as far as a continuance of operations in a partnership.

Q. Was that from the time you decided to go ahead with the Basic Magnesium contract?

A. Well, that thinking was all in a very short period of time.

Q. Things happened fast?

A. My father died December 27th, and I am back at Las Vegas the following week, some five days later. In the meantime, I have come to Los Angeles and I am naturally down at Calship and Douglas, where my brother was representing the company.

Q. Did he advise you that he would go ahead with you? A. Under certain conditions.

Q. What were those conditions?

A. Well, naturally he would want to know how much capital would be required from him in this

(Testimony of Harold S. Anderson, Jr.)
partnership venture and what the prospects, naturally, for profit or loss were, [46] and whether or not my brother, Jack Anderson, would go along as a partner.

Q. Where was your brother, Jack, at that time?

A. He was in the Army Air Corps flying the Hump in India at the time, he was a pilot in the Air Transport Command.

Q. Did he have capital invested in this Alaska partnership?

I will strike that, your Honor. I think that appears in the record.

A. He was a partner in the Alaska partnership.

Q. Did you contemplate that he would join you as a partner in this Basic Magnesium enterprise?

A. I had contemplated it. I had hoped he would, and had every intention of having him join my brother, Bob, and myself, although he was overseas at the time.

Q. Would you say, again, what your brother, Bob, was doing at that time?

A. He was supervising, representing the partnership primarily at Calshipbuilding Corporation's Terminal Island yard where we operated a plant cafeteria and canteen.

The Court: Which partnership was interested there?

The Witness: That is the California partnership.

The Court: He was a salaried employee, then?

The Witness: That is correct.

(Testimony of Harold S. Anderson, Jr.)

Q. (By Mr. Bennion): Was that the contract referred to [47] in the stipulation, which was dated September 2, 1941?

A. I believe that is the date of the contract.

Q. Where was the other operation that he was supervising?

A. The Douglas Aircraft Company's operations at Long Beach, where we operated the in-plant feeding facilities for the plant, central cafeteria and several field cafeterias, as we call them.

Q. Our stipulation, paragraph 6(d) states that your operation in the Douglas Aircraft plant in Long Beach was pursuant to an oral agreement entered into on or about July 1, 1941. Would you explain to the court why there was no written contract for that job?

The Court: What paragraph?

Mr. Bennion: Paragraph 6(d) at the bottom of page 3.

Q. (By Mr. Bennion): What was the situation of your operation down at Douglas?

A. We were operating there under an oral contract, we had no written contract; we had not been able to reduce the oral agreements that we had had to writing at that time.

Q. Were you attempting to do so?

A. We were always attempting to do so.

I might add that plant was a new branch of the Douglas Company, and it was growing so fast that we were all involved in rapid expansion, and it was just one of those things that [48] kept sliding away

(Testimony of Harold S. Anderson, Jr.)
in order to make way for things that had to be done right now.

The Court: You had your equipment in?

The Witness: Yes, sir.

The Court: And in operation?

The Witness: Yes.

Q. (By Mr. Bennion): Would you explain just what kind of organization the California partnership had here in Los Angeles on December 27, 1941?

A. Our general office was at 1063 Gayley Avenue in West Los Angeles.

Q. Who did you have employed there?

A. We had an auditor, we had, I believe, three office clerks working under the auditor, and a stenographer.

Q. Who did you have out at these two jobs that you referred to, the Douglas and Calship?

A. At the Douglas plant we had a manager that worked for the Post Office cafeteria here in Los Angeles, a man named Goodwin, as I recall, that we hired sort of right off the cuff when we needed a man for the job.

Q. That was at Douglas, you say?

A. That was at Douglas.

The Court: Did you have other employees there?

The Witness: At Douglas?

The Court: Yes. [49]

The Witness: Yes, cooks and kitchen help. But as far as the project manager, as we called him, that was the only executive employee.

The Court: What was your brother's title?

(Testimony of Harold S. Anderson, Jr.)

The Witness: My brother, as I said, was a supervising man working between our Los Angeles office and the two jobs at Calship and Douglas.

The Court: Go ahead.

Q. (By Mr. Bennion): Was that just a feeding operation at Douglas?

A. Just a feeding operation.

Q. And also at Calship?

A. Just a feeding operation. No housing.

Q. Would you tell the court the kind of operation that was being conducted at San Luis Obispo and Camp Roberts?

The Court: Before you go into that——

Was your operation at Calship similar to Douglas?

The Witness: Very similar. Both food operations with central cafeteria preparation, kitchens, and canteens or field cafeterias spread out through the works.

The Court: And you had a manager in charge?

The Witness: Yes.

The Court: And help?

The Witness: Yes, cooks and all the necessary help to go with a deal like that. The manager at Calship was a man [50] named Crane, as I recall it, that we hired through an employment agency in Los Angeles.

Q. (By Mr. Bennion): At the time you started that? A. At the time the job was started.

Q. Do you recall whether those contracts were cancelable?

(Testimony of Harold S. Anderson, Jr.)

A. Well, inasmuch as we didn't have a written contract at Douglas there was no cancellation feature there. But the Calship contract, which was a written contract, that was cancelable, I believe, on either 30 or 60 days' notice.

Q. And do you recall whether it was cancelled?

A. Whether it was cancelled?

Q. Yes.

A. The contract was cancelled subsequently in 1942.

Q. I think we have stipulated the date.

A. I don't recall the exact date.

The Court: July 27th, the stipulation says, 1942.

The Witness: Sometime in '42, as I recall.

Mr. Bennion: And the other one was also cancelled.

The Court: The stipulation says that Douglas was cancelled November, 1942.

The Witness: It was in the fall of the year as I recall, yes.

Q. (By Mr. Bennion): The stipulation shows that you had a contract at Camp Roberts, dated June 6, 1941, and a contract [51] of December 9, '41, at Camp San Luis Obispo, the latter one replacing an oral contract of March, '41. Will you tell the court what those operations were at those two Army posts?

A. At Camp San Luis Obispo we operated what were known as the Post Exchange fountain grilles, and the Fortieth Division officers' mess hall.

Q. What did that entail?

(Testimony of Harold S. Anderson, Jr.)

A. That entailed feeding only. No housing. The fountain grille is a glorified sort of fountain operation.

Q. What did you have at those posts in the way of organizational personnel?

A. As I recall, we hired one of the supervisors of the Owl Drug Store chain here in Los Angeles for the manager at Camp Roberts, and Camp San Luis Obispo we had, also, another Owl fountain manager. The organizations at those camps were built up as required at the discretion of each of those two men. Fountain clerks and janitors were about the only classification of employees on those particular jobs, and a cook or two, depending on the activity at the time.

Q. Will you tell the court after having decided to go ahead with the job in Nevada how that expanded, what your operations entailed?

A. As I recall, about six to eight months after the first purchase orders were given to us, that the camp had increased in size to the point where we were feeding and housing [52] approximately 3,600 construction men, plus our own crew, which consisted of some 500 employees at the time, at the peak.

Q. 500 of your own employees?

A. That is correct.

Q. What would they consist of, mainly?

A. Cooks, general kitchen help, mess hell waiters, commissary clerks, bartenders, janitors, which classification took care of the janitor work in the

(Testimony of Harold S. Anderson, Jr.)
dormitories, the housing and the tent areas, canteen workers, truck drivers, warehousemen, auditors, and office clerks——

Q. Were they——

A. (Continuing): Card room employees.

Q. Go ahead.

A. That is just generally the type of employees that were employed doing that type of work.

Q. Were they hired on a permanent basis?

A. I wish they had been more permanent than they were.

Q. How permanent were they?

A. Our manager, our first manager on the project lasted approximately one year, and the kitchen help and the dining room help and the janitors turned over approximately 100 per cent a month.

Q. Where did you recruit that labor?

A. We recruited the labor from our Los Angeles warehouse operation down here at 6th and Alameda, and we would hire [53] as many as 40 people at one time; and we got into the transportation business for a while; we transported under contract with a carrier our employees right from 6th and Alameda to the job site. The turnover, as in most industries of that character during the war, was very, very high.

Q. Do you recall how many meals a day you would serve during the peak operations?

A. Approximately 20,000. That is not a complete meal, but we considered a sandwich a service,

(Testimony of Harold S. Anderson, Jr.)
so we figured we served approximately 20,000 meals a day.

Q. What other services did you provide at Basic Magnesium, aside from eating and sleeping?

A. As I said before, we operated what we call a commissary service within this main central building. We sold workmen's clothing, tobaccos, candies, and general merchandise. We operated a soda fountain in this commissary; we operated a barber shop; we operated a beer bar, just beer, no hard liquor or wine, just bottled beer; we operated a card room where poker was played as a pastime by the men living in the camp; and we operated a billiard room, billiard tables and pool tables, snooker tables; we operated pinball machines and slot machines in the commissary.

Q. This is in Nevada you are speaking of now?

A. Those enterprises are legal in Nevada.

Q. How about drugs? [54]

A. Drugs and sundries in the commissary.

Q. That is part of the commissary?

A. That was part of the commissary merchandise.

Q. Mr. Anderson, I show you an agreement dated December 11, 1942, which is marked Exhibit 2; do you recognize that instrument?

A. Yes, I do.

Q. Who was Orien H. Anderson who is a party to that agreement?

A. She was the widow of my father, Harold Anderson, Sr.

(Testimony of Harold S. Anderson, Jr.)

Q. Was she your mother?

A. No, she was not.

Q. She was your stepmother?

A. Stepmother, by marriage.

Q. Was she represented by independent counsel in drafting that agreement?

A. Yes, by an attorney named Frederick Mahl, as I recall, M-a-h-l, and a John Wheeler. I don't recall which office he worked out of.

Q. Any others?

A. As far as I know, those were the two lawyers that represented Mrs. Anderson.

Q. Was Mr. Hubert Morrow in the negotiations?

A. Yes, I recall he was, because I am sure he was in the negotiations inasmuch as John Wheeler was associated with [55] Mr. Morrow. If I am wrong, I don't know. But I recall his name. Wheeler and Mahl stand out in my memory as the men who were in on the negotiations at all times.

Q. Was that contract the result of protracted negotiations?

A. Yes, some eight months of negotiations.

Q. In that contract you agreed to pay to the estate of your father $75,000 with respect to this California partnership; was that price, value, subject to negotiation between you, on the one hand, and Mrs. Orien Anderson, on the other, through your respective counsel?

A. Yes, it was. That was the sixty-four-dollar question, the price that we could agree on as to setting a value on contracts that we were purchasing.

(Testimony of Harold S. Anderson, Jr.)

Q. Would you tell the court why you——

A. That we hoped to purchase.

Q. Would you tell the court why you were willing to pay into the estate $75,000?

A. Well, I figured that we had a chance to make a profit by operating the contracts, and in our best judgment that was the price that we could afford to pay and get our money back and hope to make, naturally, an additional profit on top of it.

Q. Were you familiar with the books of the company at that time? A. Yes, I was. [56]

Q. And its balance sheet? A. Yes, I was.

Q. What was your educational background?

A. I was a graduate from Stanford University in 1936, economics major, and I then went on to Harvard Business School, took a year of business administration courses at Harvard Business School.

Q. And when did you graduate from there?

A. June of 1937, if I recall.

Q. I think the stipulation shows that you entered into this partnership with your father at the beginning of 1938? A. That is correct.

Q. Who kept the books and records of the partnership? A. At what date?

Q. Well, from the beginning on up to your father's death.

A. I was the general bookkeeper from 1938 until about the time that we took on the Camp San Luis Obispo operations in 1941.

Q. Then who kept the books?

A. A man by the name of James Colliss was the

(Testimony of Harold S. Anderson, Jr.)
man that relieved me and took over the books, sometime early in 1941.

Q. Were you aware of the fact—I call your attention there to Exhibit 16—that your father's capital account showed no net worth on the date of his death? [57] A. Yes, I was.

Q. In your negotiations, was anything ever said regarding good will?

A. Never anything to my recollection was ever said about good will.

Q. Did you pay any money for good will?

A. No.

Q. What was it that you paid for for that $75,000, or obligated yourself?

Mr. McHale: I object to that question, your Honor. The contract speaks for itself and is the best evidence of what the parties purchased. That is Exhibit 2.

The Court: Objection sustained. Let me see Exhibit 16.

(Document handed to the court.)

Q. (By Mr. Bennion): Mr. Anderson, I will ask you if there was any good will in the business of the California partnership at the date of death?

A. I would say no.

Q. Would you explain why?

A. Well, this business that we happened to be in to me is a business of personal service, and its success repends entirely on the active operating work-

(Testimony of Harold S. Anderson, Jr.)

ing partners. When H. S. Anderson, Sr., died, the good will was attached to him, any good will that he had built up was certainly his, and as far as I am concerned it died with him. [58]

Q. Why, then, were you willing to pay $75,000?

A. Because I was aware from my own knowledge and experience, as a partner in this business, of the profit prospects or possibilities from the contracts that were then existent in this California partnership.

Q. Were those profits realized?

A. I would say they definitely were realized.

Q. Do you remember roughly how much profit was earned during '42 and '43 by the California partnership?

A. As I recall it, in 1942 the partnership profit was approximately $246,000 as reflected in our books and tax returns.

The Court: How much?

The Witness: $246,000, approximately.

The Court: This is the California partnership?

The Witness: The California partnership, 1942 profit. In 1943, as I recall the California partnership profit was approximately $96,000. And based on that profit showing I think quite naturally the contracts that we bought for $75,000 were certainly well repaid.

The Court: Let me interrupt, if I may.

Mr. Bennion: You bet, your Honor.

The Court: On this Exhibit 16—this was a double entry set of books, I take it?

(Testimony of Harold S. Anderson, Jr.)

The Witness: Yes. [59]

The Court: The first item shown is cash, and it shows in red figures some $18,000, and $18,000 in the red. How did that come about?

The Witness: Judge, that is the type of bookkeeping that we were employing at the time. It was called a voucher system, as I recall, and we had no accounts payable ledger, so in effect the bank account, the bank balance consistently showed an overdraft or a red figure.

The Court: Why would that be?

The Witness: I would like to call on Mr. Arnold to explain that particular type of bookkeeping, if he will.

The Court: All right. We will pass that for the time being.

In other words, the bank balance, when you balanced it out, showed in substance an overdraft of checks drawn against actual deposits made?

The Witness: Yes.

The Court: I notice as liabilities you have listed H. S. Anderson—that is your father?

The Witness: That's right.

The Court (Continuing): $29,013.26. How was that a liability to your father?

The Witness: Well, that was an advance of cash moneys to this partnership.

The Court: He advanced to? [60]

The Witness: That is correct.

The Court: Was there a ledger sheet kept for your father H. S. Anderson?

(Testimony of Harold S. Anderson, Jr.)

The Witness: Each of the partners had a ledger sheet, yes, sir, showing their capital accounts.

The Court: Was it a capital account or an advancement account? I don't know whether it makes any difference or not.

The Witness: I can't answer that, Judge, just offhand.

The Court: I notice your name doesn't appear, no money due you from the partnership.

The Witness: Well, my contribution to this partnership was services only at that time.

The Court: You had made no capital contribution?

The Witness: I had made no capital contribution. My services were my contribution.

The Court: And your brothers, J. H. and R. W., the figures shown after their names were those capital, or——

The Witness: Those were advances from their share in their participation in the Alaska partnership.

The Court: Maybe this is a simple question, and I don't know enough about books to answer it: How would it happen that your net worth would come out exactly zero?

The Witness: I would say, first of all, Judge, that there were no profits, no surplus earned at that time. [61]

The Court: Had your father ever had a capital account set up where he showed a capital investment?

(Testimony of Harold S. Anderson, Jr.)

The Witness: I don't recall, Judge. I can't answer that without checking back on the records.

The Court: Of course if your father never had a capital account——

The Witness: I might answer it this way, Judge, excuse me, that ever since I can remember any profits that he was ever able to make in this business when he was working by himself before I joined with him, he never had any capital, whatever earnings he made or profits, he immediately withdrew them from the business and lived on them, frankly. It was that kind of a business, and he was that kind of an operator, whatever he made he immediately withdrew it because he needed it to live on.

The Court: All right. Go ahead.

Mr. Bennion: Your Honor, maybe I could make this observation as to why it comes out exactly zero. Whatever there was in that business at the date of death in this contract was treated as an advance and payable by the partnership back to his estate, so that you will remember this morning——

The Court: That would have varied. I could see how that would happen. In a double entry set, assets equal liabilities, and here was an account of advances made by the deceased, I imagine if there was any activity on that account, variations in that account alone would take care of the question I asked. [62]

Q. (By Mr. Bennion): Mr. Anderson, did you

(Testimony of Harold S. Anderson, Jr.)
at my request jot down from your audit statements the figures of income of these partnerships for '42 and '43?

A. Yes, I did. I have them written down here. I was just quoting them from memory a moment ago.

Q. I don't think you had the right figures, and I was wondering——

A. I could quote them exactly now.

The Court: All right.

The Witness: 1942 profits of the California partnership were $274,858.46.

The Court: And the '43 figure?

The Witness: The '43 profits of the California partnership were $184,799.79.

The 1942 profits from the Alaska partnership were $96,666.32. The 1943 profits from the Alaska partnership were $130,839.92.

The Court: Your contracts with the Government weren't subject to renegotiation?

The Witness: No, sir, they weren't: That Alaska contract—I will retract that statement, it is not quite correct. The Alaska contract was a contract directly with the War Department, cancelable on one hour's notice, any time they wanted to take over, and there was no clause in that contract, as I recall, that mentioned renegotiation of profits. [63] The Basic Magnesium contract, the Defense Plant Corporation had no provision for renegotiation of profits.

The Court: Go ahead.

Q. (By Mr. Bennion): Mr. Anderson, do you

(Testimony of Harold S. Anderson, Jr.)
recall when the estate received these payments of $75,000 and $50,000?

A. Yes, as I recall, those payments were made in December of 1942.

Q. Do you recall the date?

A. I would say they were concurrent with the execution of the settlement agreement, which was signed on December 11, 1942. Of course, they were subject to the approval of the court, but the moneys were paid over, as I recall, in December of 1942.

Mr. Bennion: If your Honor please, I have an estate tax return of the decedent, which is kind of a bulky document, and I only wanted the witness to identify these particular assets as having been reported on the return. Could I have the witness refer here and read into the record——

The Court: Have you shown it to counsel? Maybe counsel can look at it and then you can read into the record what you want from it.

Mr. Bennion: If your Honor please, with counsel's permission, I would like to read into the record: The estate of H. S. Anderson, deceased, filed an estate tax return on which in Schedule F—— [64]

The Court: What date was it filed?

Mr. Bennion: On or about March 25, 1943. On Schedule F under the designation "Other miscellaneous property" there was included the following items:

> "1. Partnership interest, 40 per cent in co-partnership of Anderson Brothers Supply

(Testimony of Harold S. Anderson, Jr.)

Company of Alaska, community property of the fair market value of $50,000.

"2. Partnership interest——"

Mr. McHale: Show the value at date of death.

Mr. Bennion: Value at date of death $25,000. That is the community one-half.

Do you agree to that?

Mr. McHale: That is what it says.

Mr. Bennion: Now, No. 2.

"Partnership interest, 75 per cent in copartnership of H. S. Anderson Company, separate property of the fair market value of $75,000."

Then I am skipping No. 3——

The Court: Was that also listed as community property?

Mr. Bennion: No. That is separate property, full value of $75,000 included.

No. 3 is not material here.

"No. 4 Account receivable from H. S. Anderson Company, community property $29,013.26." [65]

Value at date of death is one-half, or $14,506.63.

Schedule F also states:

"As to separate or community property see copy of contract and court order approving same attached hereto."

Likewise with the consent of counsel I call attention to the fact——

(Testimony of Harold S. Anderson, Jr.)

The Court: First, is it stipulated that that is what the estate tax for the estate of H. S. Anderson, deceased, shows?

Mr. McHale: That is what Schedule F of the estate tax return shows.

The Court: All right. Go ahead.

Mr. Bennion: And that return reported an estate tax due in the sum of $71,631.62.

The Court: How is that material?

Mr. Bennion: As to the actual tax?

Mr. McHale: I don't believe there is any materiality.

Mr. Bennion: We take the position, your Honor, that having reported these interests as assets in the estate, it furnished an income tax basis. In other words, these interests and contracts as the witness has testified were valuable, and an estate tax was paid on them, and the full income as and when collected would not be subject to tax, even if the estate had held on to them; they would have this basis to be recovered. So it is our position that that basis should be [66] recovered whether in the hands of the estate or by whoever purchased it.

Following the general rule that assets included in an estate tax return require a basis which is entitled to be recovered taxwise.

Q. (By Mr. Bennion): Mr. Anderson, regard-the Alaska partnership would your testimony be the same with respect to good will as you have testified as to the California partnership?

A. Yes, it would.

(Testimony of Harold S. Anderson, Jr.)

Mr. Bennion: That is all, your Honor. You may take the witness.

The Court: All right. You may cross-examine.

Cross-Examination

By Mr. McHale:

Q. Mr. Anderson, what date did you say you came down from Nevada, approximately, that is, in 1941, when your father died?

A. As I recall, Mr. McHale, it was the 24th of December, which was the day before Christmas.

Q. Did your father die suddenly of a heart attack, or had he had any preliminary warning at all?

A. He died in his sleep very suddenly.

Q. And when was the last time that he had been in Nevada [67] working on this project?

A. I would say he had been in Nevada about the first week in December in 1941.

Q. Had he been there continuously for some time prior to that?

A. Prior to that, no, sir. I think he perhaps had made, as I recall, maybe two trips before the December trip.

Q. When was his first trip?

A. I believe it was in October. I was closing down a camp in northern California at the time, I recall he was there in October, and I came down and I then went to Las Vegas shortly after I arrived here.

Q. Did you meet him in Las Vagas?

A. No.

(Testimony of Harold S. Anderson, Jr.)

Q. When he made his first trip to Las Vegas did he then return to Los Angeles?

A. He came back to Los Angeles.

Q. What did he do on his first trip? Did he tell you what he had done on his first trip?

A. Yes, sir; he was attempting to negotiate a contract.

Q. With whom?

A. With the same Howard Mann that I spoke of earlier.

Q. How do you spell his name?

A. M-a-n-n, Mann, who was the general manager for McNeil Construction Company. [68]

Q. Prior to purchase order 211, which is part of Exhibit 13 which you have already testified to today, was there any other kind of memoranda, any kind of agreement?

A. To my knowledge there was no agreement of any form except what was brought to this point in purchase order 211.

Q. Do you know the approximate date you went up to Nevada for the first time?

A. I would say the first part of November, 1941.

Q. What did you do up there?

A. As I recall, the first trip I made I was in the negotiations with Howard Mann along with my father on the contracts.

Q. Your father was there at that time?

A. That is correct. I was there with him on that one occasion, as I recall, when we were there to-

(Testimony of Harold S. Anderson, Jr.)
gether. And he had been there, as I said, once or twice before that time.

Q. Did you know Howard Mann before that time? A. No, sir.

Q. You met him for the first time?

A. Yes, sir.

Q. Was there anybody else in the negotiations?

A. As I recall, the negotiations were conducted with Howard Mann at this particular stage of the negotiations, in the purchase order stage.

Q. At this time there were no purchase orders, were [69] there; the first purchase order No. 211 is dated December 8, 1941, is that not true?

A. That is correct, I believe.

Q. In advance of this purchase order was there any kind of oral agreement or oral arrangement entered into whereby the H. S. Anderson Company was to provide any services?

A. To my knowledge there was not. There was merely conversation and negotiations up to that point.

Q. Then you came back to Los Angeles after this first meeting up there in November?

A. Yes.

Q. And when did you go back to Las Vegas or Nevada?

A. I would say the first week in December, prior to the—just prior to purchase order No. 211.

Q. What was your reason for going at that time?

A. My primary job was to start operations in the event that we got the authority through these

(Testimony of Harold S. Anderson, Jr.)

purchase orders or this purchase order to proceed.

Q. And did your father go with you on that trip? A. No, he did not.

Q. When did you first see purchase order No. 211?

A. I would say the same date that it was issued at Las Vegas by the Defense Plant Corporation.

Q. You were up there and you saw it before it got to Los Angeles, is that right? [70]

A. I think I did. I can't remember exactly. But I saw it immediately after it was written.

Q. Was your father there at that time?

A. No, he was not.

Q. What did you do at that time upon seeing the purchase order?

A. Upon seeing the purchase order?

Q. Yes.

A. I proceeded to make ready the opening of this B & G Dormitory to take men as called for under that purchase order. I made my——

Q. Did you hire those two employees that you had there at that time?

A. I hired those two men myself. I made my headquarters, as I stated earlier, in this B & G Dormitory. I took a room, an office, and made it my living quarters.

Q. In respect to this Alaska partnership had you been to Alaska?

A. At what date?

Q. Prior to your father's death had you gone to Alaska?

(Testimony of Harold S. Anderson, Jr.)

A. Definitely. I was in Alaska the months of June and July of 1941.

Q. Were either of your brothers up there before the date of your father's death?

A. My brother John started the project in July of 1940. [71]

Q. Was your father up there at the time your brother John was up there? A. Yes, sir.

Q. How much time did you spend up there at the Alaska partnership before your father died?

A. The job opened, as I recall, in July of 1940, or June, 1940, because I was there shortly after the opening. I spent, as I said before, the months of June and July on the job at Anchorage.

Q. After you left Alaska that time did you ever go up there again before the date your father died?

A. I don't believe I did, because I was involved in the starting of the Basic Magnesium project.

Q. And did your brother John remain up there?

A. My brother John left Alaska in January of 1941. He entered the Army Air Corps in that same month.

Q. Did any other member of your family remain up there or go up there between that time and the date that your father died?

A. No, sir, not to my recollection.

Q. Your father, did he go up there?

A. He may have been there once between January of 1941, and December 27th, the date of his death. Because I was there the two months in the

(Testimony of Harold S. Anderson, Jr.)
middle of the year, June and July. My brother Jack had come out in January, '41. [72]

Q. Who managed the project in the absence of yourself, your brothers, or your father, in Alaska?

A. The Alaska project?

Q. Yes.

A. A man by the name of Rather, R-a-t-h-e-r, Douglas Rather.

Q. After your father's death did you go up to Alaska to visit the project again?

A. On regular trips. That was part of my responsibility.

Q. When did you first go up after your father's death?

A. As I recall, I made a summer trip in 1942, which was approximately six months after he died.

Q. Did any other member of your family go up before that time? A. No, sir.

Q. This manager remained managing this outfit after your father died?

A. Yes, until I relieved him of his job in early 1943, as I recall.

Q. Was there anybody else besides Mr. McNeil that you negotiated with on the Nevada project, or was he the man you always dealt with?

A. Subsequently we negotiated with a man named Louis Ben, who was the housing administrator for the Defense Plant [73] Corporation. And another gentleman by the name of Frank Case, who was the project manager succeding Mr. Howard Mann.

(Testimony of Harold S. Anderson, Jr.)

Q. Immediately upon the death of your father, Mr. McNeil was informed of that, was he?

A. Yes.

Q. And you had a conference as soon as you returned to Nevada, as you stated? A. Right.

Q. Was this order No. 1933, dated March 2nd, 1942, Exhibit 13, the first one to carry your name, rather than your father's, that is, Harold S. Anderson, Jr.?

A. As I recall, that was, yes. It was in March of '42.

Q. Did you give Mr. McNeil instructions with regard to that, or was it done as a matter of course?

A. I think that was done of their own volition, inasmuch as I was the man that they were directly dealing with.

Q. Your father's widow, Orien Anderson, did she ever participate before your father's death in any of his partnership businesses?

A. No, sir.

Q. After his death did she participate in any of the negotiations with the Defense Plant Corporation, the Basic Magnesium of Nevada?

A. No, sir.

The Court: We will take the afternoon recess at this time. [74]

(A recess was taken.)

The Court: Proceed.

Q. (By Mr. McHale): To go back to negotiations in 1941 with respect to Basic Magnesium

(Testimony of Harold S. Anderson, Jr.)

project, I think you said that your father made a second trip to Nevada in December?

A. As I recall, he did.

Q. Was that the same time that you were there?

A. I was there at that time.

Q. For how long a period was he there?

A. We were together there for the same time, I would say we were there for two days on that trip.

Q. Was the whole time consumed in negotiating, or were any other steps taken towards settling the project?

A. I would say the entire time was taken up in negotiating.

Q. And those are the only two times that your father ever went to Nevada on this project?

A. No. I said he went three times; two times himself, alone, and once while I was there.

Q. This was his third and last trip?

A. That is correct.

Q. How did you go about providing for the various materials that you would need in setting up the tent camp?

A. It required the placing of purchase orders with a Los Angeles company called The United Tent and Awning Company, [75] for the tent canvas.

Q. Who did that?

A. I made those arrangements.

Q. How did you go about providing for the bedding and linens?

(Testimony of Harold S. Anderson, Jr.)

A. As I recall, I made arrangements for the initial purchases from the Inco Company for the beds, a local Los Angeles concern, and for the blankets, as I recall, my father purchased the blankets from the American Woolen Company.

Q. How did you provide for the air conditioners and gas heating units?

A. I bought those, the air conditions I believe were manufactured by the Royal Manufacturing Company of—out here in Alhambra, for the desert type coolers that were used in the tent cooling system; the heaters were butane space heaters that I bought from O'Keefe & Merritt, a local manufacturer.

The Court: What was this $60,000 item that involved heaters or coolers or something, which McNeil was to take over?

The Witness: That was for the heating and cooling of the main central building, the wooden building that housed the mess halls, the kitchens, the offices, et cetera.

The Court: It did not apply to these tents?

The Witness: No, sir. And, furthermore, to the wooden dormitories that were subsequently [76] built.

Q. (By Mr. McHale): Who planned the layout of the camp?

A. I planned the layout of the camp with a man named Richard Stadleman, who was an engineer on the staff of McNeil Construction Company. He is now a practicing architect in Las Vegas.

(Testimony of Harold S. Anderson, Jr.)

We were given the general location of the camp, and from that point on Mr. Stadleman and I laid out the camp on this designated area.

Q. In Exhibit 13, these various purchase orders having to do with the Basic Magnesium plant, I notice purchase order No. 3836 was made out to the Anderson Brothers Supply Company of Nevada, and it is dated April 21, '42; will you please explain what the Anderson Brothers Supply Company of Nevada was, or how that name was used in the purchase order?

A. That name was merely a trade style used for the Nevada project. The California partnership was the actual partnership that had the contracts, but the trade style we called the Anderson Brothers Supply Company of Nevada.

Q. When was that trade style adopted?

A. I would say it was adopted at the time, concurrently with the formation of the H. S. Anderson Company, the California partnership that succeeded——

Q. Wait a minute. Wasn't the California partnership started in 1938?

A. That is correct, that is the partnership of my father [77] and myself.

The Court: You didn't hear the last part of his answer. He said, adopted concurrently with the formation of the H. S. Anderson Company partnership, which was something that formed after his father's death.

The Witness: That's right.

(Testimony of Harold S. Anderson, Jr.)

Q. (By Mr. McHale): You mean, then, that another and new partnership was formed on the date of your father's death? When was this new partnership you are speaking about formed?

A. That was formed December of 1942, that is H. S. Anderson Co., that is what I called the new partnership.

Q. To refresh your recollection, I want to show you Exhibit 13, purchase order 3836, which is dated April 21, 1942.

A. This was during the period we were negotiating the settlement agreement, at which time I as a surviving partner was operating these facilities.

Q. How did you happen or how did this purchase order happen to be issued to Anderson Brothers Supply Company of Nevada?

A. Because we had notified the Basic Magnesium officials that this was the trade style that was being used on this particular project.

Q. Prior to that, if you will look through Exhibit 13, purchase order No. 1933 is made out to Harold S. Anderson, Jr.

The Court: Is there only one purchase order in Exhibit [78] 13 made out to the Anderson Brothers Supply Company of Nevada?

Mr. McHale: No, your Honor, there are others. I can't say without looking at the exhibit.

The Court: All right. Let's go ahead.

Q. (By Mr. McHale): When did your other brother come back from the Air Force to join the various partnership enterprises?

(Testimony of Harold S. Anderson, Jr.)

A. He came back from overseas in 1943, early 1943, but he was not out of the Army, he was assigned as a pilot instructor at Palm Springs Air Base.

Q. That was your brother Jack?

A. John, Jack, that's right.

Q. Did your brother Robert go to Nevada with you after the death of your father?

A. Yes, he did.

Q. When was the first time?

A. I would say early in 1942.

Q. How early, approximately?

A. February. I made regular trips there, of course, myself, once a week, commuting to the jobs between there and Alaska; but he went on almost every occasion with me from that time on until he was——

Q. I didn't quite get the ages of your brothers. In 1941 how old was your brother Bob?

A. He was 22½, I would say, just 22. [79]

Q. And your brother John?

A. A year and a half older, aproximately, 23½.

Q. And you were 26 at that time?

A. 26½. I was 27 in 1942.

Q. The new partnership agreement which is Exhibit 3, which was entered into on December 23, 1942, states that Ethel Hamilton Anderson contributes $7500, and Gloria S. Anderson $3750, and that Ethel Hamilton Anderson should have a share of the profits of 7.5 per cent, and Gloria S. Anderson 3.75 per cent, and that H. S. Anderson, Jr., should

(Testimony of Harold S. Anderson, Jr.)
have 42.5 per cent, John Hardy Anderson 25 per cent, Robert W. Anderson 21.25 per cent in that partnership? A. That is correct.

Q. Were the shares of the partners in the assets of the business to be the same as their share in the profits? A. Exactly the same.

Q. Would the same be true as to the Alaska partnership? A. Yes, sir.

Q. All of the various contracts that were in existence in both the Alaska and California partnerships, including all the various operations, were terminable at the will of the other party, were they not?

A. Yes, on 30 days' notice, the highest being 60 days, and one or two of the contracts on 48 hours notice, particularly those with the Army. [80]

Q. What was the nature of your establishment in Los Angeles, that is, this Alameda warehouse establishment that you spoke of?

A. That was used as a purchasing office and an assembly point for merchandise that was shipped to the Nevada operation.

Q. Was it used in connection with the other operations?

A. Oh, yes, and San Luis Obispo and all the operations that worked out of this area.

Q. How large a building was it, in general terms?

A. The frontage on 6th Street was 50 feet, with another 50 feet and a vacant driveway or truck parking area, and I think the property was 150 or

(Testimony of Harold S. Anderson, Jr.)

-60 feet deep. It was an old warehouse building.

Q. Did you ship all your supplies through Los Angeles, or was there local buying at the various places?

A. There was local buying at the various operations.

Q. Did you have central accounting in Los Angeles?

A. At 1063 Gayley Avenue, which was the home office, the accounting office.

Q. How many employees were there—Strike that.

When did you establish this Gayley Avenue office? A. In 1941.

Q. And when did you establish the warehouse?

A. At approximately the same time. The warehouse was [81] used as a purchasing office.

Q. What persons did you have purchasing materials, aside from yourself or your father?

A. A purchasing agent named Shawver.

Q. How long was he with you?

A. Approximately a year, a year and a half.

Q. What period, approximately?

A. From about the middle of 1941 until the end of 1942. My brother Robert Anderson took over Mr. Shawver's duties as purchasing agent after Mr. Shawver left.

Q. Your father left no will, is that correct?

A. That is correct.

Mr. McHale: I think that will be all. Just a moment.

(Testimony of Harold S. Anderson, Jr.)

Q. (By Mr. McHale): Exhibit 16, this balance sheet that you already examined, shows the payables to H. S. Anderson and J. H. Anderson and R. W. Anderson. When the profits weren't withdrawn from the business how would you show it on the balance sheet? As a liability?

A. As owing to the partners.

Q. So liability and net worth would be the same?

A. Not necessarily. The profits up to that point —there weren't any profits. The capital that had been invested was tied up in inventories and working capital. That is in the California partnership. The Alaska partnership had shown a profit, which was the source of the capital funds and [82] the working capital for the California partnership at that time.

Q. Who were the partners in this Anderson Brother Supply Company of Nevada, partnership?

A. That was a fictitious trade style, as I have mentioned earlier. The same partners in that company were the partners of the H. S. Anderson Company.

Q. At that time wasn't the H. S. Anderson Company just you?

A. Well, that is true, that is correct.

Q. This was a——

A. I was a surviving partner, and I guess I would be the Anderson Brothers Supply Company of Nevada at that time.

Mr. McHale: That is all.

The Court: I want to ask a question or two.

(Testimony of Harold S. Anderson, Jr.)

You made the settlement agreement on December 11, 1942?

The Witness: Yes, sir.

The Court: And that agreement recites that you paid to the estate the $75,000?

The Witness: That's right.

The Court: And it recites, also, that you and your brothers paid to the estate $50,000.

The Witness: Yes.

The Court: Now, the corporation, the H. S. Anderson Company, formed after your father's death —strike out [83] "corporation"—the partnership which is shown by the exhibit numbers formed after your father's death, H. S. Anderson Company, wasn't formed by agreement until December 23rd, '42?

The Witness: That is correct.

The Court: What about this interim in there, between December 11th and December 23rd? You testified the money was paid to the estate on December 11th, even though it was to be some time later that the agreements were confirmed. Did you personally dig up the $75,000 that went to the estate?

The Witness: No, sir; I didn't have it.

The Court: Where did it come from?

The Witness: Through bank loans.

The Court: Did you make the loans?

The Witness: Yes, I did. The Security-First National Bank, the head office.

(Testimony of Harold S. Anderson, Jr.)

The Court: You borrowed the $75,000, then, to pay into the estate?

The Witness: It was more than that I borrowed. The borrowings took care of the $75,000 and other obligations at the time.

The Court: There were other obligations, I know, but I am interested particularly in the $75,000.

The Witness: Yes.

The Court: You signed the note for that?

The Witness: Yes, I signed the notes at the Security [84] Bank.

The Court: Did anyone else sign the note with you?

The Witness: I believe my brother, Robert Anderson, signed the note with me. My brother, Jack, was overseas. In other words, we were at all times negotiating and all the time with the idea that we would have our partnership in effect if and when we could make this settlement agreement with the estate.

The Court: The partnership that came along that was formed on December 23, 1942, then claimed the payment of that $75,000?

The Witness: That is right. Each of the partners had taken on an obligation.

The Court: And in the two successive years, '42 and '43, claimed $37,500 of it in each year as a deduction?

The Witness: That is correct.

The Court: How did you get the transfer, or

(Testimony of Harold S. Anderson, Jr.)

what were the bookkeeping transactions between the payment of the $75,000 to the estate by you on December 11th and the claim after December 23rd, '42, that the money had been paid by the partnership?

The Witness: Because it was set up on the books of the then existing partnership, which was H. S. Anderson.

Mr. Bennion: If your Honor please, I don't want to interrupt this testimony, because it is very material, but an error has crept in here which I was going to clarify, [85] and that is I was going to show the witness this bank statement. The contract of December 11th, '42, was filed with the court for approval, and I want to call the witness' attention to the fact that that approval, which is Exhibit, I believe 20 or 21, was dated December 22nd, if I could show it to him, fix the date of December 22nd as the time for the hearing, and if I can show the witness a bank statement to refresh his recollection, I believe——

The Court: Yes. I may have led him off into a ditch here with these questions. Show him the bank statement.

Mr. Bennion: Mr. Anderson, I show you a bank statement of Security-First National Bank, Estate of H. S. Anderson, Deceased, and ask you to give the date on which some deposits appear there, and to explain what they mean?

The Witness: Well, this deposit here, of course, is the result of one of the bank loans.

(Testimony of Harold S. Anderson, Jr.)

Mr. Bennion: When you say a deposit here, it is what——

The Court: Now, wait. You are talking about the estate account, are you?

Mr. Bennion: Yes, Estate of H. S. Anderson.

The Court: And the witness here was the administrator?

Mr. Bennion: Yes.

The Witness: That's right.

The Court: So the account shows a deposit of $141,480.05 on December 22nd, '42. Now, was that the $75,000, plus some [86] of the other matters called for in that contract?

The Witness: Plus $29,000, I think, that was used to clean up the obligation to H. S. Anderson. And seventy-five for the purchase of the prospective contracts in each of the two partnerships.

The Court: There is a figure here shown as a deposit to the estate account of $12,533.21 on October 30th, '42.

The Witness: That is this figure here (indicating).

The Court (Continuing): Which is the first pencil figure. Then appears the one hundred forty-one thousand odd dollars deposit we talked about on December 22nd, '42. That is the second penciled figure.

The Witness: That's right.

The Court: They total $154,013.26. Subtracting from that $29,013.26 we have the penciled figure $125,000. Therefore the $125,000 would be the fifty

(Testimony of Harold S. Anderson, Jr.)
and the seventy-five thousand dollars, the twenty-nine thousand-dollar figure would be the amount paid to your father's estate, money due him?

The Witness: That is correct.

The Court: So the point is that added together and totaling one hundred fifty-four thousand some odd dollars they equal the two deposits shown on October 30th, '42, and December 22nd, '42. I think it is clear.

The Witness: That is the arithmetic. [87]

The Court: Therefore, the payment made, if it was made, on December 11th, '42, of the fifty and seventy-five thousand dollars, was a conditional payment, conditional upon the matter being approved by the court?

The Witness: That is correct.

The Court: So the day following court approval the partnerships were formed?

The Witness: I would say that is true. I don't know what the legal aspects are.

The Court: Is that what you want?

The Witness: Counsel will have to answer that one. I am not a lawyer.

Mr. Bennion: Is it your recollection that this borrowing from the bank was made after the court had approved the contract, rather than on the day the contract was signed?

The Witness: I couldn't answer that. I don't remember without studying it further. December was the month that all these things happened.

(Testimony of Harold S. Anderson, Jr.)

Mr. Bennion: Who borrowed the money, Mr. Anderson—you, personally, or the partnership?

The Witness: I just told the court that my brother, Robert, and I signed the note, cosigned the note at the bank.

The Court: Well, you might have cosigned the note, but do you recall whether the note was also signed on behalf of the partnership? [88]

The Witness: Judge, I can't remember offhand.

The Court: Well, I don't know that there is any particular materiality in this matter.

Do you think there is, Mr. McHale?

Mr. McHale: I don't believe so, your Honor.

The Court: If the court approved the compromise on the 22nd, and the partnership was formed on the 23rd, and we see the major portion of the money deposited in the estate account on the 22nd, even if the money was borrowed on the signature of H. S. and Robert, the only loose end would be the brother in the Air Corps, and I wouldn't imagine that would present any problem.

Mr. McHale: The terms of the agreement, your Honor, I think, provide who purchased what, and the terms of the agreement are very clear, as far as the California partnership, that the surviving partner bought out the interest of the deceased partner.

The Court: We will have to continue tomorrow morning, won't we? I don't want to go past 4:30 tonight, and we can't close up here in fifteen minutes.

(Testimony of Harold S. Anderson, Jr.)

Mr. McHale: Is your Honor going to take a recess now?

The Court: Yes, I will take a recess at this time until 10:00 o'clock tomorrow morning.

(Whereupon at 4:15 o'clock p.m. Thursday, January 28, 1954, an adjournment was taken until 10:00 a.m., Friday, January 29, [89] 1954.)

Friday, January 29, 1954—10:00 A.M.

The Clerk: No. 12044-C Civil, et seq., Anderson v. United States, further trial.

Mr. Bennion: Shall we have Mr. Anderson resumed the stand, your Honor?

The Court: Yes, sir.

H. S. ANDERSON, JR.

called as a witness by and on behalf of the plaintiffs, having been previously sworn, resumed the stand and testified further as follows:

Mr. Bennion: If your Honor please, last evening we were in a little difficulty here about the actual mechanics of the payment of these sums to the estate of the decedent, and I believe we are in position this morning to clarify the matter.

Redirect Examination

By Mr. Bennion:

Q. Mr. Anderson, last night, you testified regarding borrowing some money from a bank. Were you

(Testimony of Harold S. Anderson, Jr.)
able last night to locate in your files any documents connected with that borrowing?

A. Yes, I was. I went to my office last night, and I have with me this morning a true copy of a note in the amount [91] of $200,000, dated December 22, 1942, payable to the Security-First National Bank of Los Angeles.

This note is signed on behalf of the three partnerships, or the two partnerships, I should say, H. S. Anderson Co., Anderson Brothers Supply Company of Alaska, and for the Anderson Brothers Supply Company of Nevada. The reason I say "for" is the Anderson Brothers Supply Company was a fictitious trade style of H. S. Anderson Company. This note is signed by H. S. Anderson, Jr., a partner, and by R. W. Anderson, a partner.

Q. Does that show that those two signatures are as partners of H. S. Anderson Co.?

A. Under the signing line?

Q. Yes. A. It just has the names.

The Court: Can this note be offered in evidence?

Mr. Bennion: Yes, if your Honor please, we would like to offer the note in evidence.

The Court: You may withdraw it by the filing of a photostat.

The Witness: This is not the original note. That I cannot locate. I don't know what has happened to it. Some 12 years have elapsed since that happened.

Mr. Bennion: The writing on the note in ink, is that your handwriting? [92]

(Testimony of Harold S. Anderson, Jr.)

The Witness: That is my handwriting at that time. That note was signed, as you can see, December 16, 1942.

Mr. McHale: Is this your retained copy of a note that you delivered to the Security-First National Bank?

The Witness: It is.

Mr. McHale: Was it signed by the various persons whose names are typewritten on it?

The Witness: Yes, sir.

The Court: The Government is going to make no objection?

Mr. McHale: No objection.

The Court: Apparently it would be an office copy kept in the regular course of business.

The Witness: Yes.

Mr. McHale: Yes.

The Court: The note will be received in evidence as Plaintiff's Exhibit No. 22.

Q. (By Mr. Bennion): Did you find another document last night?

A. I have a document which is a General Continuing Guaranty form, which is a true copy.

Q. What is the date on that document?

A. The date on this document is December 16, 1942.

The Court: For the purposes of this discussion we will mark this Exhibit 23 for identification. Go ahead. Signed December 16th—— [93]

The Witness: 1942, by Cynthia Beal, Attorney in Fact, for J. H. Anderson, by H. S. Anderson, Jr.,

(Testimony of Harold S. Anderson, Jr.)

R. W. Anderson, Gloria S. Anderson, and Ethel H. Anderson, for the partnerships Anderson Brothers Supply Company of Alaska, and H. S. Anderson Company, and Anderson Brothers Supply Company of Nevada.

(The document referred to was marked Plaintiff's Exhibit 23, for identification.)

Q. (By Mr. Bennion): Does that guarantee indicate that it is in connection with any particular borrowing?

A. It indicates it is in connection with the borrowing of $200,000.

Q. There are the words, "Signed Dec. 16, 1942, H.S.A., Jr.," in ink.

A. That is my notation in my handwriting at that date.

Mr. Bennion: If your Honor please, we would like to offer this in evidence as Plaintiff's Exhibit 23.

The Court: Received in evidence as Plaintiff's Exhibit 23. Let me look at it a minute.

(The document, marked Plaintiff's Exhibit 23, for identification, was received in evidence.)

The Court: J. H. Anderson was your brother who was in the Service?

The Witness: That is correct.

The Court: Who is Cynthia Beal? [94]

The Witness: That is J. H. Anderson, Jr.'s, and my mother, and Robert's mother, who was acting

(Testimony of Harold S. Anderson, Jr.)
as Jack's attorney in fact when he was overseas.

The Court: You knew of your own knowledge that before he went overseas he had given Cynthia Beal a power of attorney to act in his behalf?

The Witness: Yes.

The Court: And Gloria S. Anderson is your wife?

The Witness: Robert's wife.

The Court: And Ethel is your wife?

The Witness: My wife.

The Court: So that the signatures on Exhibit 23 in total constitute the signatures of all the persons who were partners in the new partnership, H. S. Anderson Co., and the new partnership, Anderson Brothers of Alaska?

The Witness: That is correct.

Q. (By Mr. Bennion): Mr. Anderson, I show you Exhibit 2, which is the agreement dated December 11, 1942, and call your attention to the fact that on the last page the signature has the typewritten name, "John Hardy Anderson, by," and then the signature Cynthia Beal as attorney in fact; I also call your attention to Exhibit 3, page 4, and I will ask you whether she signed in the same manner in behalf of John Hardy Anderson, Cynthia Beal, Attorney in Fact, under all of these exhibits, Exhibits 3, 4, 5 and 6. [95]

A. Yes, she did.

The Court: That is your mother's signature?

The Witness: That is my mother's signature.

Q. (By Mr. Bennion): Cynthia Beal was your

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mother, was she? A. That is correct.

Q. And also John's mother?

A. John's mother.

The Court: And Robert's mother?

The Witness: And Robert's mother.

Q. (By Mr. Bennion): Exhibits 3, 4, 5 and 6 are dated December 23, 1942, which is one day after the court approval of the agreement of December 11, 1942; I will ask you whether or not the terms of these exhibits 3 through 6 had been agreed upon between the parties who signed it at a date prior to December 23, 1942? A. Yes, they had.

Q. When had they been agreed upon?

A. These agreements—the terms of these agreements had been agreed on at least four months, I would say, prior to the signing, during the negotiating period which culminated in the signing of the settlement agreement of December 11, 1942. Before my brother, Jack, went overseas he had attended the funeral of my father in December of 1941, he had come down from Sacramento, from Mather Field where he was finishing his [96] flying training, and at that time my brother, Robert, was available, my brother, Jack, was available, my mother was available, Mrs. Cynthia Beal, and we had discussed our partnership and the pros and cons of forming a new partnership and carrying on in this subsistence business, and we had agreed in subsequent months prior to December 11th that these agreements were agreed upon prior to December 11th, the terms of the agreements.

(Testimony of Harold S. Anderson, Jr.)

Q. That was prior to the time that you signed the agreement to pay $75,000 to the estate?

A. That is correct.

Q. It was understood, then, that these other partners would bear their share of that obligation?

A. Yes, sir.

Q. Otherwise you would not have signed that obligation?

A. I couldn't have afforded to myself. I would not have signed it.

Q. Mr. Anderson, were you able to locate a copy of the voucher regarding the $141,000 deposit, which was testified about yesterday evening?

A. Yes, I have that voucher dated December 21, 1942, in the amount of $141,480.05, made payable to H. S. Anderson, Jr., administrator of Estate of H. S. Anderson, deceased.

Mr. Bennion: If your Honor please, may we mark this?

The Court: This will be marked 24, for identification. [97]

(The document referred to was marked Plaintiff's Exhibit 24, for identification.)

Q. (By Mr. Bennion): Was this voucher a copy of a check? Was the top part of this voucher a copy of the check that was drawn to the estate?

A. That is correct. In our system of bookkeeping we use the voucher system; the original of this voucher is the actual check itself, showing the distribution and the detail on the original copy, which

(Testimony of Harold S. Anderson, Jr.)
is the check itself, and then there is a second copy which is an office copy, and the third copy which is this yellow copy, which is the triplicate copy. It represents a true copy of the check itself.

Q. Whose check is it?

A. That is the check of H. S. Anderson Co., H. S. Anderson Company, which company was the new partnership.

Mr. Bennion: If your Honor please, I would like to offer as Exhibit 24 the document marked for identification.

The Court: It will be received in evidence as Exhibit 24.

It is a minor matter, but I am just trying to figure out this $12,000 item, how this worked in. Let me see. You were drawing a check on the H. S. Anderson Company account?

The Witness: Yes, sir.

The Court: To the estate?

The Witness: That is correct. [98]

The Court: And you were the executor or administrator of the estate?

The Witness: Yes, sir.

The Court: Now, the item says, "Less Balance in Administrator Account." We know from the figures that that $12,000 was used to make the total $154,000. I am trying to figure out how that was used.

The Witness: Well, I would say there were other moneys in this estate account, in this administrator

(Testimony of Harold S. Anderson, Jr.)
account, which were being used to pay other estate bills, by me as the administrator.

Q. (By Mr. Bennion): Do you recall where the $12,000 would have come from?

A. I can't just offhand, no, sir.

The Court: Did you have fees coming as administrator or executor of the estate?

The Witness: No, sir, I waived all fees. I had no fees in connection with the estate.

The Court: It would look offhand—this probably isn't the answer, because your books would be properly kept, but it would look offhand as if you had used estate money to the extent of $12,000 to pay the three obligations listed.

The Witness: Judge, I am sure that was not the case, but I can't tell you for sure.

The Court: I don't think it was the case, [99] either.

The Witness: I think I would have been remiss in my duty as administrator and would have been called on very quickly.

The Court: Unless there was in the administrator account $12,000 that by some accounting procedure belonged to you. I wonder if the fact that that $12,000 was previously deposited to the estate accounts helps us in any way?

The Witness: I would say it was money advanced for the payment of estate bills that had to be paid.

The Court: In other words, if I remember the ledger sheet from the estate account, the estate bank account, which we read yesterday, it showed that

(Testimony of Harold S. Anderson, Jr.)
$12,000 item as having been deposited to the estate account some days before, before December 22nd?

The Witness: Yes, sir; as I recall it was. I have that bank statement with me.

The Court: What was the account yesterday? I don't know whether we sufficiently identified it. It was the account of the estate of H. S. Anderson?

Mr. Bennion: It was the bank statement of H. S. Anderson's estate.

The Court: It was the account of which he was the administrator?

Mr. Bennion: Administrator.

The Witness: Administrator, yes. [100]

The Court: It was the account that you were carrying on?

The Witness: Excuse me, Judge. The bank statement is in the ledger there, right in front of you.

The Court: Let me see that.

(Documents handed to the court and witness.)

The Court: The account is entitled H. S. Anderson, Jr., special administrator of the estate of H. S. Anderson, deceased.

The Witness: This account was later changed, Judge, to administrator.

The Court: It started out as special?

The Witness: That is correct. I think that is what happened.

The Court: At the time of the transactions in December of '42, the account was H. S. Anderson, Jr., administrator of the estate of H. S. Anderson,

(Testimony of Harold S. Anderson, Jr.)
deceased, it was an account in the Security-First National Bank, and there was a deposit to the account on October 30, 1942, of the $12,000 item we are talking about shown on Exhibit 24, namely, $12,533.21. Another interesting thing, this may solve it, this may have been when your account was changed from special administrator to administrator, and the bank instead of merely changing the name of the account probably opened up a new account. You will notice that this deposit of $12,533.21 shows no balance [101] at the time it was made. So that it was apparently the first deposit in the account, and therefore was a sum of money that came from somewhere deposited to your account as administrator of your father's estate. It shows no prior balance. Let's see if we find any other sheet that shows general. This is all special here.

The Witness: Frankly, it is very vague in my mind after all these years that have gone by.

The Court: On December 31st, '42, the sheet we were looking at, which says, "Administrator of the Estate," wound up with a balance of $116,000 and some odd cents on December 31st, '42, and it is carried over in the same amount on another sheet called "Special Administrator"; could the $12,000 have been the opening of the account? Are there any other sheets in '42? There don't seem to be.

Mr. Bennion: I don't know whether this is a pertinent observation, but we could probably trace the $12,000, but I think it has always been my understanding that this partnership had paid moneys

(Testimony of Harold S. Anderson, Jr.)
into the estate, because that was the only source of moneys for the widow, or for a number of other reasons, to pay expenses with, and that he properly took credit for the $12,000 which had theretofore been put into the estate.

The Court: I think we can do this, for the purpose of the record, and see what you think, Mr. McHale: The essential questions in this case do not turn around this $12,000 item. [102] The matters of the settlement of the administrator's accounts were matters for the Probate Court. The law presumes that the law has been obeyed and that transactions were lawfully and regularly carried on, and I think we could presume that this $12,000 deposited to the estate account was money which came from sources outside of the estate, either H. S. Anderson or H. S. Anderson and his brothers. Don't you think that would follow?

Mr. McHale: I don't think that is an issue in the case, your Honor, anyway. There is no question that they raised this money by borrowing.

The Court: All right.

Mr. McHale: There are a lot of things that flow from this whole situation. For instance, Harold, Jr., and John and Robert were all heirs of the estate, and out of this $75,000, for instance, they were entitled, I think, to $37,500, which just flows as a matter of fact.

The Court: Which doesn't have much to do with the issues of the case, though, does it?

(Testimony of Harold S. Anderson, Jr.)

Mr. McHale: I think it might; it might.

The Court: All right. Proceed.

Q. (By Mr. Bennion): Mr. Anderson, some questions were directed to you yesterday by counsel, Mr. McHale, regarding your manager in Alaska, Mr. Rather? A. Mr. Rather, yes. [103]

Q. In the conduct of your business did you maintain supervision over the managers?

A. Very definitely.

Q. Would you explain to the court how you maintained such supervision?

A. Mr. Rather was the project manager in Alaska; we maintained a Seattle office in the Smith Tower Building where we maintained a purchasing agent and a personnel man, a man by the name of Joe Harnish. I would make trips to Seattle on a regular basis, and also on a regular basis to Alaska. I would be in constant communication by telephone to Seattle, and by radio telephone to the job at Anchorage. And our system of accounting provided for daily cash reports, daily force reports, and several other types of reports from the job each day, operating reports, from which I could always get a very good idea of what was going on saleswise and businesswise on the job. As a matter of fact, after about, I would say, approximately 10 months after my father died these reports and other reports that I had heard coming down from Alaska led me to believe that something was a little haywire with Mr. Rather's operations, so I sent a Mr. Ohl, Alfred Ohl, who was an employee of H. S. Anderson Com-

(Testimony of Harold S. Anderson, Jr.)

pany, and a trained public accountant, to Alaska to make an examination of the books, which he did in 1943, and the findings from Mr. Ohl's audit and examination proved beyond a doubt that we must replace [104] Mr. Rather, which we did in 1944, early 1944.

Q. Was that because of shortages?

A. That was because of shortages, and his taking certain liberties with partnership funds.

Q. When you say that you were in constant touch or contact with him, how often, for example, would you telephone?

A. I would say I averaged a call a week to Alaska, and perhaps a couple or three calls a week to Seattle by telephone.

Q. What was carried on at Seattle, did you say?

A. The purchasing and hiring and the personnel work for the Alaska job. All merchandise was purchased at Seattle, and all help was hired at Seattle and Los Angeles, we hired help in our local office here, also.

I might add one further point. I used to travel to Alaska via Air Transport Command on an Army pass.

Q. Was that because you were working on the Army Air Base?

A. Because we were working for the Government, had a Government contract for the Army.

Mr. Bennion: I think that is all, your Honor.

May I just ask this to clear up the record?

Q. (By Mr. Bennion): Mr. Anderson, any testi-

(Testimony of Harold S. Anderson, Jr.)

mony or statements yesterdays regarding payment, other than as reflected by these documents introduced this morning, would you say it [105] was erroneous?

A. I would say so. I think I qualified myself yesterday by saying "Approximately" and "To my best recollection."

Q. Were you speaking from recollection yesterday?

A. Yes. But the documents today show the exact dates that I referred to yesterday. I said December, generally, yesterday, but these documents give the exact dates today in December of 1942.

Mr. Bennion: That is all.

Recross-Examination

By Mr. McHale:

Q. When your father died, Mr. Anderson, did you have any idea at that time of the value of the equipment on hand in the Anderson projects, the California partnership?

A. Yes, the balance sheet reflected certain equipment.

Q. Did that balance sheet reflect the actual value or just the book value as it had been written off?

A. I would say that value represented the depreciated value.

Q. You are aware that revenue agents adjusted that depreciation at the end of 1942, are you not?

A. Yes, sir.

(Testimony of Harold S. Anderson, Jr.)

Q. And increased the value considerably of the assets? A. Yes, sir. [106]

Q. As reflected by Defendant's Exhibit A, reflecting a change in equipment of $103,000 writing up, and an increase in depreciation reserve of $55,000, increasing considerably the value of the assets in the business, you are aware of that, are you not?

A. Yes, from this report I am, yes, sir.

Q. You are also aware, are you not, that the State of California placed a value on your father's interest in the partnership at $75,000 in the California partnership? A. I don't recall.

Q. I am going to show you a certified copy of the inventory and appraisement signed by you and filed in the estate of your father, showing a value of his interest of $75,000. Do you recall that?

A. Yes, I signed it.

Q. And also a value of the Anderson Brothers Supply Company of Alaska of $50,000?

A. Yes, sir.

The Court: What was it appraised at?

Mr. McHale: That is the appraised value. I will offer——

The Court: Let me look at that.

(Document handed to the court.)

Mr. Bennion: Mr. McHale, are not those the same values that appear on the estate tax return?

Mr. McHale: I believe they are. I have forgotten now. [107]

The Court: This document that counsel is re-

(Testimony of Harold S. Anderson, Jr.)
ferring to is a photostat of the inventory and appraisement in the estate of H. S. Anderson, deceased, No. 210180, probate matter in the Superior Court of the State of California, Los Angeles County, and when these appraisements are made out, inventory and appraisements are made out, the items are typed in, and ordinarily the amounts are left blank, and then the appraiser comes along and fills in the amounts and makes the appraisal.

Mr. McHale: I think in this file, your Honor, there is a later appraisal.

The Court: So that I would—well, this is a copy of the official appraisal signed by William Daggett, Jr., the appraiser, so I would assume that the document was handed to the appraiser with the amounts blank and the appraiser filled in the amounts. That is the ordinary practice in probate matters. Does that make any difference to you?

Mr. McHale: No. I just want to show the value that Mr. Anderson as administrator accepted in the probate proceedings.

The Court: He doesn't accept anything. He has nothing to do with it.

Mr. McHale: He could contest those matters.

The Court: What probative weight this has I am not sure. If you mean this as an admission by Harold Anderson that these interests were worth that amount of money, I don't think it is an admission, although I am not prepared to say what [108] difference it makes, because Exhibit 2 shows that they paid that amount of money. However, I am

(Testimony of Harold S. Anderson, Jr.)
familiar with probate practice and probate matters, and with the exception of items such as a bond that has a fixed value, or a promissory note with a certain amount due on it, those amounts might be carried over in the right-hand column when the document was handed to the appraiser, and he might accept the amounts you put in, but ordinarily you hand these to the appraiser in blank and he appraises the property and he makes his certificate, "I, the Undersigned, hereby appraise the estate," and ordinarily he sends it back to the attorney and the attorney pays his fee and files it.

But it certainly is not an admission by the administrator who certifiies as to values.

You notice the certificate says, "H. S. Anderson, Administrator, being duly sworn, says that the following inventory contains a true statement of all the assets of the estate which have come to his knowledge."

He doesn't state that these are the values. Because actually that certificate which I have just read, and which precedes the inventory, must be filed and sworn to before the appraiser ever appraises. So H. S. Anderson, Jr., signed that certificate on April 14, 1942, the appraiser made his certificate on December 4, 1942.

Mr. McHale: Well, I offer it for the purpose of showing [109] that he does set up an interest in the partnership.

The Court: We have read it into the record. Do you want anything more?

(Testimony of Harold S. Anderson, Jr.)

Mr. McHale: I think if you mark the entire file for identification I will wait until it is my case.

The Court: The probate photostatic file will be marked——

The Clerk: Defendant's Exhibit B for identification.

You might pick out what parts you want, or all of it, at that time.

Mr. McHale: Thank you.

(The document referred to was marked Defendant's Exhibit B, for identification.)

The Court: What we have been talking about is the Inventory and Appraisement contained in Exhibit B, for identification.

Mr. Bennion: Could I have counsel state again the purpose of putting that in?

Mr. McHale: Well, I am not offering it at this time.

Mr. Bennion: Could I have the reporter repeat that, the purpose?

The Court: I can tell you what it was without looking for it.

After we discussed it he said: Then I offer it as an admission on the part of H. S. Anderson, Jr., that there was inventoried an interest in the partnership. [110]

Was that your statement?

Mr. McHale: Yes.

That is all.

Mr. Bennion: Plaintiff rests, your Honor.

(Testimony of Harold S. Anderson, Jr.)

The Court: Are you through with this witness?

Mr. McHale: Yes, your Honor.

The Court: I want to ask a couple of questions.

Mr. Bennion: Fine, your Honor.

The Court: This Exhibit 2 in evidence, which was what we will call the settlement agreement, dated December 11, 1942, paragraph 6, you will note it says, "H. S. Anderson, Jr., as surviving partner of The California partnership, in full satisfaction and discharge of all claims of the estate of H. S. Anderson, deceased, and of the heirs of H. S. Anderson, deceased, for and on account of the interest of said H. S. Anderson in his lifetime and that his estate has acquired since his death in and to the California partnership, hereby agrees to pay into the estate of H. S. Anderson, deceased, the following sums of money:

"(a) The sum of $75,000 * * *"

You will note, in substance it says H. S. Anderson, Jr., agrees to pay $75,000.

When you signed this agreement, was it your intention that you were paying that money on your own behalf, or that you were paying that money on behalf of your two brothers and the [111] wives of yourself and Robert Anderson?

The Witness: It was definitely my understanding that I was paying the money out for the partners.

The Court: Meaning the three brothers and the two wives?

The Witness: Yes, three brothers and the two

(Testimony of Harold S. Anderson, Jr.)
wives, which was the limited partnership which we had agreed on prior to the signing of this settlement agreement.

The Court: Similarly in 8, paragraph 8 of Exhibit 2, where it says, "H. S. Anderson, Jr., Robert W. Anderson, and John Hardy Anderson, as surviving partners of The Alaska Partnership," skipping and so forth, "hereby agree to pay into the estate of H. S. Anderson, deceased, the following sums of money:

"(a) The sum of $50,000 * * *"

was it your intention that you and your two brothers were paying that money solely on behalf of the three of you, or that you were paying that money in behalf of the five persons who became the partners, namely, the three brothers and the two wives?

The Witness: On behalf of the five partners, the two limited partners, the wives, and the three general partners.

The Court: All right.

The Witness: Is that all?

The Court: Anything further?

Mr. McHale: At this time I would like to [112] move——

The Court: You may step down.

Mr. McHale: ——since plaintiff has rested, for a judgment for the defendant on the grounds that plaintiffs have not sustained their burden of proof in this case; firstly, in that the evidence is quite

clear, I think, the agreement, that what was purchased was not specific contracts, but an interest of the decedent in two partnerships, the California and the Alaska partnerships. The documents signed by all the partners and the heirs speak of a fair market value of an interest in both partnerships, and that is all that was sold, if anything was sold.

The Court: What follows from that? At least give it to me in skeleton form.

Mr. McHale: The interest purchased is a capital asset. It is not specific contracts, or an item of property that can be depreciated. An interest is an ownership, like stock in a corporation is a capital asset. It can only be sold or exchanged or liquidated, that is the only way a gain or loss can be realized therefrom. They cannot deduct it as an expense, as they are trying to do out of the earnings in the subsequent years.

That is the first premise that falls from that.

The Court: How does a man get his capital back, then? Let's assume for argument that there was being purchased an interest in the partnership. [113]

Mr. McHale: It remains on the books until they sell it or exchange it or dissolve it. It remains as a capital asset.

Secondly, the evidence doesn't show, I don't think the plaintiffs have sustained their burden of proof to show there were any contracts in existence that had any great value on the date of death.

In the first place, there were purchase orders, two or three of them, in existence when he died, for a camp I think of 600 men. I am speaking of the

Nevada operation. And to provide restaurant or feeding facilities for these men. The purchase orders that comprise the bulk of the business at Basic Magnesium were entered into after the date of death. And by Harold's own testimony right after his father died he went right up in Nevada and had this conference with the various people and asked whether he could go on. And he said he could go on. And it seems to me the testimony is most clear that Harold was an active partner and it was on the basis of Harold's carrying forward this business, which had a going concern value, they had a warehouse on 6th and Alameda, they had an office in Los Angeles, an office in Seattle, they had an office in Alaska, all of which was carried on by managers and by people in the field, a going business which had a fairly large staff of office workers and warehouse people, and so forth.

This wasn't a personal thing like an insurance man who [114] has contracts and so forth. This was a going, operating business and it wasn't dependent on contracts at all. It was dependent upon Harold, Jr., going out and doing the work, and that is what he did in the following year.

So I think when they try to say it was the father's interest in these contracts that they sold, it is wrong. It was as much Harold's and the boys', all three of the boys' joint interest in the other partnership, and the going business, what amounts to a going concern value or good will, which was purchased, if anything.

The Court: I don't follow you on that. Nobody contended that these contract, if they were contracts, belonged to H. S. Anderson, deceased.

Mr. McHale: I think that is the major contention, your Honor.

The Court: These contracts, if they belonged to anyone at all, belonged to the partnership, as far as the California deal was concerned, the partnership composed of the deceased and H. S. Anderson, Jr.

Mr. McHale: But, your Honor, they are saying —and I think this is their contention, but I say the evidence doesn't bear them out—that what they bought were these specific contracts, that is, Harold Anderson, Sr.'s interest in these contracts. And I say the evidence is quite clear, what was Harold Anderson, Sr.'s interest in the partnership, and not [115] any specific partnership property. And the documents are clear.

The documents filed and approved by the Superior Court are clear that all they bought was the interest of Harold Anderson, Sr. And I don't think the testimony shows that they purchased any particular contracts, because there weren't any really valuable contracts in existence.

The Court: Now, wait. On whether they bought the contracts, before we get to that, it seems to me you skip over with a rather light and nimble touch what goes on when a partnership is dissolved. Here was a partnership composed of the father and H. S. Anderson, Jr., taking now just the California partnership; the father dies. Now, I have read both your

memoranda on this partnership law, I haven't studied it completely, but that is what I was doing this morning when I delayed you. I was going over these memoranda again. Here are two partners, a partner dies, that dissolves the partnership; the partnership, however, continues for the purpose of winding up in liquidation, and it did in this case. For almost a year the son carried on the partnership. Now, because the father dies does not mean that the son is then the owner of all the partnership property. The property still, or whatever there is, is still the property of the partnership. The son is only the trustee as a surviving partner, and he has certain duties to wind up, liquidate, pay [116] the liabilities and marshal the assets and so forth. Now, when somebody comes along and buys the partnership interest, buys what the partnership had—and let's not argue now about what they bought—then you have an entirely different situation.

Let's take a couple of examples to see what I am thinking about.

Example No. 1: The father has died, the son is a surviving partner, and X, a stranger, comes in and pays $75,000 for the interest of the partnership. X then has bought from the partnership whatever the partnership has and becomes the owner as an individual of that property. He doesn't buy it from the son, H. S. Anderson, Jr., as an individual; he doesn't buy H. S. Anderson's interest in it, because as an individual he had no interest, he was a surviving partner, the representative of the partnership. So in example No. 1, X buys everything the

partnership has, but he buys it as an individual from the surviving partner.

Mr. McHale: Your Honor, I think right there he buys his interest, but he doesn't buy the specific assets.

The Court: I say let's pass for the time being what he bought. I am trying to illustrate another point. I may be wrong. Until I get through with my examples you may not see my point.

Now we will take another example, No. 2. The same [117] situation, the father dies, the son a surviving partner, and the son and X decide to buy the interest of the partnership. When the son and X, the stranger, buy the interest of the partnership, the son is acting as a purchaser in his individual capacity, he is acting as a seller in his trustee capacity, and it is a situation exactly the same as if X had bought. The mere fact that the son is buying and that he was the surviving partner doesn't change the legal situation. X and the son, two separate entities, then buy from the partnership.

The third situation: Suppose instead of a stranger being involved, Harold Anderson, himself, the surviving partner, decides to buy out the partnership interest. He then acts in two capacities. As the buyer he acts exactly the same as a stranger would act, except possibly a duty to exercise good faith and not take an unconscionable advantage, and so forth, and so on. But in his capacity as a purchaser he is in no different situation than a stranger. In his capacity as a seller, he is the trustee, the surviving partner.

So there is a sale to—you can say it is being sold to the surviving partner, but actually the partner in one capacity buys and in the other capacity sells.

Now, isn't that the law, so far, as you read these sections?

Mr. McHale: I don't quarrel with your Honor on the law at all. I say all that the person buys is the interest. [118] He doesn't buy the specific assets, because the partnership, as expressed in the statutes, Uniform Partnership Act, is that the partners don't own the specific assets; they just have an interest in the partnership as a whole.

The Court: I don't know where this is going to take us, but I can't now remember the statement that you made that got me off on this alleged analysis of it. You made some statement which made me think that you didn't agree with what I have just stated as the way these sections work.

Now we go a step further here. In the situation at hand it is certainly arguable that when H. S. Anderson, under paragraph 6, paid the $75,000, and where under paragraph 8 the three boys paid the $50,000, that they were not buying for themselves, that they were buying for the group. The evidence certainly can be argued to show that: The loan of money, the guarantee that was given, and the immediate formation of the partnerships.

It is true that the bald agreement, Exhibit 2, shows that H. S. was the stranger buying whatever he bought, and that the three brothers in the Alaska case were buying whatever they bought for $50,000.

Then you finally come down to what you have been wanting to talk about, what did they buy.

Well, what did they buy?

Mr. McHale: They bought the interest of their father in the partnership. [119]

The Court: Not their father.

Mr. McHale: Don't call him the father; call him the deceased partner. They bought his interest.

The Court: They did not buy his interest. I just got through telling you that they bought—whatever it was that they got, it was the interest of the partnership, not of the father or of the son, but collectively whatever interest the partnership had at the time of death is what they bought.

Mr. McHale: They bought that interest, they bought an interest. They didn't buy this contract and that contract and another contract; they bought an interest, and in buying an interest they should set it up on the books as a capital item, and it is not deductible.

The Court: Now we are getting——

Mr. McHale: Let me explain their theory.

Their theory is that they bought, say, the Basic Magnesium contract, and having a limited life they can amortize it over the limited life. But all the documents in the case say they bought the interest. I am not disagreeing that all three of them came in. It doesn't make any different whether Harold, Jr., bought it, or all three of them. But the point is what they bought. That is the basis of my motion, your Honor, that they haven't sustained their burden of proof.

The Court: Well, let me ask you this: Supposing there was a partnership like this, and all the assets that you can [120] find in the partnership—let me interject, I don't know where this is going to lead me or help me, but I would like to have you view it —supposing they bought the interest of a partnership, and all the assets that you can find when you got through shaking the partnership down was a piece of ground, real property, and a Cadillac automobile. Now, what would follow from that? Obviously the ground is a capital asset, and I don't think we would have any argument about that. If it was eventually sold you would have to determine whether there was a gain or loss on the capital asset. Now, what would you do with the automobile? The same thing?

Mr. McHale: Assuming it was being used for a business purpose, you would depreciate it. But they are depreciating all the physical assets, and the Government allows them all the depreciation on the physical assets. But they are trying to depreciate contracts based on the fact that there was this death. If there hadn't been the death and he had gone on living, and the business would have come to a close in '43 or '44, they wouldn't have been able to depreciate it. But because of this particular situation, that there was a purchase and sale, they say they can depreciate the contracts.

The Court: But you would depreciate the car if it was used for business purposes?

Mr. McHale: Yes.

The Court: Now, suppose instead of a car or

piece of [121] ground there was a contract which expressly said, "This contract shall run for two years," and let's assume that that was the only asset of the partnership that they paid money for; what would you do with that asset? Would you depreciate it over a two-year period?

Mr. McHale: I can conceive of a situation where there could be a particular type of thing, but I would say in the ordinary case no.

The Court: Of course, these contracts are terminable so you don't know when they are going to be terminated. However, to a certain extent you have to look at it with foresight and not hindsight, and under the stipulation if the contract is an asset, it is stipulated that it has a two-year life.

Mr. McHale: You see, your Honor, in this case I think the testimony establishes that this subsistence contracting business was a going concern, as long as it is kept moving and operating, and so forth, it had a definite value, it was making money, and basically what they were buying was, to the extent that the amount paid for the interest didn't represent real assets it represented that going concern value or good will, as it is commonly known.

In the Basic Magnesium situation there were only two or three of these purchase orders on the date of death, if your Honor does find they were binding contracts. The bulk of them [122] were executed after Harold Anderson, Sr.'s, death.

The Court: That doesn't give me a lot of concern. If I find the original purchase orders were an asset, the other purchase orders were in some cases

change orders, and those that weren't were supplements and would not have been issued if it had not been for the original orders. That doesn't bother me too much.

Mr. McHale: Right after he died there was a question whether they would pull out or withdraw, and they said, "We are going ahead."

Who was going ahead? Harold, Jr., was going ahead.

The Court: Actually it was the partnership going ahead clear up to the time of the dissolution of the partnership.

Mr. McHale: It was this going concern that was going ahead. It wasn't done on the basis of Harold Anderson, Sr., having particularly—him particularly having been responsible for it, it was this business, the carrying forward of this going concern, its establishment, its know-how, its method, its employees who were skilled in the business, Harold, Jr., being probably more responsible or as much responsible as his father, according to the testimony. He staked out the camp, had the conferences.

The Court: What is your theory of how the $75,000 should be treated? The $75,000 that was paid, of course, did not go into the new partnership. It went to strangers. The [123] new partnership did not have that $75,000.

Mr. McHale: But the repayment, I think, your Honor—in other words, in the following two years the partnership deducts or attempts to deduct as a business expense the amount necessary to repay this.

The Court: How should they have treated it? Would they ever have gotten that $75,000 back?

Mr. McHale: No. It is a capital expense. It is an investment. Of course, as any capital expenditure or capital investment, it could be later sold or exchanged or liquidated.

The Court: Yes, if there was anything to sell.

Mr. McHale: That is up to them.

The Court: But supposing the partnership only had a contract and the contract is for not over two years, and the contract is used up, how have they anything to sell? Unless you follow through and say, well, at the end of the two years they could then sell the partnership assets, the partnership assets would then be zero, because the contract has been exhausted, therefore an asset that they paid $75,000 for they now get nothing. Somewhere along the line you are going to have to give them an offset of that $75,000, aren't you?

Mr. McHale: No, your Honor. They are purchasing this interest in the business, that has brought them income in these years, that is what they bought it for, the prospect of income. Why did they come in? They had a free choice. [124] They didn't have to come in.

When you buy in any business, you can't expect out of your earnings to pay off your investment, unless they sell or exchange or liquidate the business.

The Court: I don't know about that.

Mr. McHale: You can sell it or exchange it or liquidate it.

The Court: Of course a stock situation is a little different. But if I buy some shares of stock in a company, and if I later sell that stock and make some money, I am going to have to pay on it. And if later on the stock becomes valueless, I am going to certainly claim a loss on it. If I was buying an interest in a business for the purpose of making some money, both by dividends——

Mr. McHale: That is because Congress allows you in that particular instance a specific deduction for that. But that isn't permitted here.

The Court: Are there any cases where people have bought into partnerships and paid, say, a lump sum of money for a 15 per cent interest in a partnership, and then a few years later sold out that interest in the partnership back to the partnership, or to a new partner who was taken in with the consent of all the other partners, where that partner taxwise has been treated?

Mr. McHale: I am sure there are, your [125] Honor.

The Court: Well, without deciding this matter, because I want to do some work on it, I am going to deny your motion at this time.

What I don't know about tax law would fill many, many volumes.

Mr. McHale: We are in a particularly difficult field, your Honor, I will admit that.

I would like to offer that exhibit for identification. I have in here part of the probate file. However, the whole thing has been certified, but it isn't necessary that all of the documents go in.

The Court: Let's take a short recess. Will you be able to finish before noon?

Mr. McHale: Yes, your Honor.

The Court: All right. We will take a short recess.

(A recess was taken.)

The Court: Proceed.

Mr. McHale: I have this part of the probate file, your Honor, which has been certified, but there are only certain documents in there that I wish to offer.

The Court: Just list them.

Mr. McHale: If I can remove them from the certification——

The Court: Yes. Is that satisfactory?

Mr. Bennion: Yes, your Honor. But we——

Mr. McHale: I haven't offered them yet. [126]

The Court: You want to object to them, is that it?

Mr. Bennion: We just would like to have him state the purpose for which he is offering them.

Mr. McHale: I offer from the Superior Court of the State of California, Case No. 210,180, in the Matter of the Estate of H. S. Anderson, also known as Harold Anderson, Deceased, certified copies of certain documents. This file, by the way, is marked Defendant's Exhibit B for identification.

The Court: All right. Copies of what? List them.

Mr. McHale: Petition for Authorization to Continue Operation of Business; the Inventory and Appraisement, Petition for Authority to Execute Release of Partnership Property; Return and Peti-

tion for Order Approving Sale of Personal Property Likely to Depreciate inValue; Petition for Authority to Execute Release of Partnership Property; and Report of Inheritance Tax Appraiser.

All except the last document is offered for the purpose of showing allegations of petitions by the administrator, Harold S. Anderson, Jr., with respect to the purchase of an interest in the partnerships. And the last document, Report of Inheritance Tax Appraiser, I offer because it shows interests of the various heirs in the estate, the valuation of those interests. I think it might be of help to the court to determine the amounts which they derived from the estate.

The Court: All right. Any objection? [127]

Mr. Bennion: We object on the ground that they are irrelevant and immaterial, and they cannot vary the partnership law of California, which we believe that your Honor correctly summarized here a few moments ago, and particularly the characterization by the inheritance tax appraiser would not be binding on the plaintiffs.

The Court: Well, the objection will be overruled. They will be received in evidence. The case is being tried without a jury and I will sort out what is useful and what isn't.

You said you offered some of them to show the purchase of a partnership interest. Of course if you mean that Harold Anderson, Jr., was buying the interest of his father, I think you are all wrong. He was buying the interest that he and his father had had in whatever it was.

Let me see those a minute.

Defendant's Exhibit B received in evidence.

(The document referred to, marked Defendant's Exhibit B, for identification, was received in evidence.)

Mr. McHale: I think your Honor may misconstrue what I mean. But he bought the interest the estate had in the partnership. That is the purpose.

Now, your Honor, I have various returns of the partnership and the individuals. They haven't been offered by the plaintiffs. Maybe they should be in evidence here. I have certified copies which I can offer. That way they will be before [128] the court.

The Court: All right.

Mr. McHale: There is no objection to putting them in, Mr. Bennion?

Mr. Bennion: I have no objection to their going in.

Mr. McHale: I offer the final and amended partnership returns for the period January 1st to December 11th, 1942, for H. S. Anderson Company.

The Clerk: Defendant's Exhibit C.

The Court: Exhibit C received in evidence.

(The document referred to was marked Defendant's Exhibit C, and was received in evidence.)

Mr. McHale: The return for December 12, 1942, to December 31, 1942, for H. S. Anderson Company.

The Clerk: D.

The Court: This was a new company, then?

Mr. McHale. This is after the date of death.

The Court: D received in evidence.

(The document referred to was marked Defendant's Exhibit D, and was received in evidence.)

Mr. McHale: Partnership return for 1943 for H. S. Anderson Company; partnership return.

The Clerk: E.

The Court: Exhibit E in evidence. [129]

(The document referred to was marked Defendant's Exhibit E, and was received in evidence.)

Mr. McHale: And the partnership return for H. S. Anderson Company for 1944.

The Clerk: Plaintiff's Exhibit F.

The Court: F in evidence.

(The documents referred to was marked Defendant's Exhibit F, and was received in evidence.)

Mr. McHale: The partnership returns for the Anderson Brothers Supply Company of Alaska—the two returns are hooked together here—for the period January 1, 1942, and ending December 11, 1942. There are two returns, but one is an original and one an amended return for the same period, your Honor.

The Court: That is the period to December 11th?

Mr. McHale: Yes.

The Court: That will be Exhibit G in evidence.

(The document referred to was marked Defendant's Exhibit G, and was received in evidence.

Mr. McHale: I can't seem to find one for that final few days of that year, but I have one for the year 1943, for the Anderson Brothers Supply Company of Alaska, partnership return.

The Court: Exhibit H in evidence.

(The document referred to was marked Defendant's Exhibit H, and was received in evidence.) [130]

Mr. McHale: And for the same partnership, Anderson Brothers Supply Company of Alaska, partnership return for 1944.

The Court: Exhibit I in evidence.

(The document referred to was marked Defendant's Exhibit I, and was received in evidence.)

The Court: So you are missing a return for the Alaska partnership for the last three weeks in December of '42, December 11th to December 31st?

Mr. McHale: Yes.

The Court: That probably won't make a lot of difference.

Mr. McHale: Two returns, the original and amended return, individual income tax of Harold S. Anderson, Jr., for 1942.

The Court: Defendant's J in evidence.

(The document referred to was marked Defendant's Exhibit J, and was received in evidence.)

Mr. Bennion: Did you say both the original and amended, as one exhibit?

Mr. McHale: Yes.

The individual return for H. S. Anderson, Jr., for the year 1943.

The Clerk: Defendant's K.

The Court: K in evidence. [131]

(The document referred to was marked Defendant's Exhibit K, and was received in evidence.)

Mr. McHale: Individual return for Robert W.—two returns, again, together, original and amended individual return for Robert W. Anderson for 1942.

The Court: L in evidence.

(The document referred to was marked Defendant's Exhibit L, and was received in evidence.)

Mr. McHale: The individual return for Robert W. Anderson for 1943.

The Court: M in evidence.

(The document referred to was marked Defendant's Exhibit M, and was received in evidence.)

Mr. McHale: The individual return for Robert W. Anderson for 1944.

The Court: Defendant's N in evidence.

(The document referred to was marked Defendant's Exhibit N, and was received in evidence.)

The Court: You had no individual return for H. S. Anderson for 1944?

Mr. McHale: No, I don't believe I did, your Honor.

As the next exhibit, the original and amended return for 1942 for John H. Anderson.

The Court: Defendant's Exhibit O in evidence.

(The document referred to was marked Defendant's Exhibit O, and was received in evidence.) [132]

Mr. McHale: The next is the individual return for John Anderson for 1943.

The Court: P in evidence.

(The documents referred to was marked Defendant's Exhibit P, and was received in evidence.)

Mr. McHale: And next is an individual return for John H. Anderson for 1944.

The Court: Q in evidence.

(The document referred to was marked Defendant's Exhibit Q, and was received in evidence.)

Mr. McHale: Next is the original and amended returns for 1942, individual returns, for Ethel Hamilton Anderson.

The Court: Exhibit R in evidence.

(The document referred to was marked Defendant's Exhibit R, and was received in evidence.)

The Court: Now, Ethel is the wife of H. S.?

H. S. Anderson, Jr.: Correct.

Mr. McHale: Next in order is the individual return of Ethel Hamilton Anderson for 1943.

The Court: Exhibit S in evidence.

(The document referred to was marked Defendant's Exhibit S, and was received in evidence.)

Mr. McHale: And the next is the individual return of Ethel Hamilton Anderson for 1944.

The Court: Exhibit T in evidence. [133]

Mr. McHale: Next, two returns, original and amended, of Gloria S. Anderson for 1942.

The Clerk: Defendant's Exhibit U.

The Court: U in evidence.

(The document referred to was marked Defendant's Exhibit U, and was received in evidence.)

Mr. McHale: Next is the individual return for Gloria S. Anderson for 1943.

The Court: V in evidence.

Mr. McHale: And the next is the individual return for Gloria S. Anderson for 1944.

The Court: W in evidence.

(The document referred to was marked Defendant's Exhibit W, and was received in evidence.)

Mr. McHale: I also offer the fiduciary income tax return for the estate of H. S. Anderson, deceased, for 1942.

The Court: Exhibit X in evidence.

(The document referred to was marked Defendant's Exhibit X, and was received in evidence.

Mr. McHale: Those are all the returns that I have. I don't seem to have a couple of them.

The Court: I think you have enough.

Mr. McHale: I thought if this case was going to be submitted on briefs there may be something in the returns that might be of help. [134]

Defendant rests.

The Court: Both sides rest?

Mr. Bennion: Yes, your Honor.

If your Honor please, I think the argument that went on here a moment ago adequately covered plaintiffs' main positions. If I could just take two minutes, though, to make one comment I think maybe it might be helpful, with your Honor's permission.

The Court: Yes.

Mr. Bennion: In the Government's contention that what the plaintiffs bought was an interest in the partnership, the cases that they cited, primarily the Shapiro case and Stilgenbauer case in the Ninth Circuit, had to do with situations where the seller's tax liability was involved, and when a seller sells his interest in a partnership, or his interest in the assets, the question comes up as to whether what he

realizes is ordinary income or capital gain, and it has raised this litigation as to what he sold, whether his interest in the underlying assets or his interest in the partnership, in resolving that issue.

From our standpoint those cases do not decide the question from the standpoint of the purchaser, and I believe your Honor was inquiring about that, and I just wanted to call your Honor's attention to the Nathan Blum case, which was cited in our original pretrial memorandum on page 9, where the [135] purchaser was involved, and the purchaser, if I could just quote two short paragraphs from the Tax Court's opinion——

The Court: Let me have the citation.

Mr. Bennion: 5 Tax Court 702, at page 708, Nathan Blum. This is quoting:

> "The parties are in agreement that the transaction between Nathan Blum and his brother, Louis A. Blum, was a sale, but they differ as to the details, the petitioner contending that he bought his brother's partnership interest, and the respondent contending that petitioner bought his brother's interest in the partnership assets. Petitioner's argument is to the effect that gain or loss is realized only upon the sale or disposition of the business as such, not from the disposition of the assets in the course of business."

Which I understand is practically Mr. McHale's argument here.

The court went on, and I am quoting:

> "The result contended for by petitioner, however, does not follow from his premise. His contention ignores the fact, which cannot be denied, that as a result of the transaction between him and his brother he became the sole owner of all the assets of the business, * * *.
>
> "What the Commissioner did in the instant case [136] was merely to allocate Nathan Blum's cost *protionately* to the separate assets of the business in the ratio of cost to book value. In doing so, we think the Commissioner acted properly. Petitioner has suggested no other method of allocation which he has demonstrated to be more proper. * * *"

So it is our view of the law that this partnership interest which the decedent owned prior to his death, under the law of California that partnership is dissolved, and for the Government to say that these five new partners bought his partnership interest, there was no such thing in existence. There was no such asset which they can later buy or sell.

As I understand Mr. McHale's argument, it is that we will recover our basis if we later sell or exchange that partnership interest. But that partnership interest ceased upon the death of the decedent, and we take the position, in line with this Blum case, that from the standpoint of the purchaser, regardless of what tax problems the seller might have the purchaser allocates and has to allocate his cost among the various assets that he buys, and it is im-

material whether there was one purchaser or more. If Mr. Anderson had bought it himself you would have the same situation as the Blum case. We don't think it makes any difference whether there are three or four joining together to buy the assets.

The Court: Going back to what I said about the three [137] examples, in reading over these documents and thinking about it, I have trouble trying to find out just what was done.

The agreement, Exhibit 2, purports to pay money for the interest of H. S. Anderson, Sr. Of course, the entire probate proceedings proceeds on that theory. Query, under California law whether you can buy the interest of a partner in a partnership which has been terminated by death. There is actually no partnership in existence in the sense of there being one in which you can buy an interest. It is true the thing continues for the purpose of liquidation.

Mr. McHale: Your Honor, I was going to say the partnership isn't terminated; it is only dissolved. It is continued with the estate as a partner with the consent of the partner. H. S. Anderson, Jr., represents the estate and represents the partnership. The section of the law, 2496 Civil Code, says:

> "Retirement, death, or insanity of a general partner dissolves the partnership unless the business is continued by the remaining general partners * * * (b) with consent of all members."

It was continued.

Mr. Bennion: Oh, no.

The Court: When you get the consent of all members, then actually you have a new partnership formed.

Mr. McHale: He is the only member left. He is it.

Mr. Bennion: If your Honor please, Section 15042 of the [138] California Corporations Code—it was a different section in the prior Civil Code, but the same provision—deals with the rights of the retiring partner or estate of deceased partner, and I think the language in those documents was put there by lawyers who were familiar with this statutory language:

> "When any partner retires or dies, and the business is continued under any of the conditions set forth in Section 15041 * * * without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained"——

In other words, at the date of death.

> "and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership;"

Then it goes on in Section 15043 to say:

> "The right to an account of his interest shall [139] accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the personal partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary."

My interpretation of that is that when a partner dies his legal representative is entitled to have his interest at that date valued and determined, and that whoever continues the business, whether it be a surviving partner or anyone else, must account to his legal representative for an amount equal to that value.

Now, it is our contention that under the law of California whatever intangible partnership interest there existed prior to death was dissolved by death, and that this does not determine what you do with the money you pay. The purchaser has actually paid out money; now taxwise what does he do with it?

The interest that Mr. McHale keeps speaking about has dissolved by death, and it is the specific assets underlying that interest prior to death, but which are the only assets existing after death, which they acquire as the result of the payment. And those assets, as Mr. McHale states, some of these assets were tangible equipment. If a partner died, let us say, with a million dollars of tangible equipment, certainly the person continuing the business and paying one [140] million dollars would be entitled to recover his million dollars through depreciation

of that equipment. You wouldn't say, well, that is purchase of an interest, some intangible here which is dissolved. And we say that is exactly the situation here. These contracts were as much assets as the car that your Honor spoke of, or as a building; that those were the assets that were purchased and paid for, and the only way that we can recover our capital taxwise is through amortization over the life of those contracts.

The Court: What bothers me now is this: Assume the partnership was dissolved by death and that H. S. Anderson, Jr., continued as sort of a trustee for the purpose of liquidation. Assuming for argument your contention that what there was to be were these contracts, when the $75,000 was paid to the estate it was to represent the 75 per cent interest which H. S. Anderson, Sr., had in the contracts——

Mr. Bennion: That is correct.

The Court: ——as a matter of logic, then, at that time and prior to the purchase, H. S. Anderson, Jr., had 25 per cent interest in the same contracts.

Mr. Bennion: That is correct, your Honor.

The Court: Where does that lead us to?

Mr. Bennion: If I could follow that down: In other words, when they negotiated they placed the value of $100,000 on these contracts, but they said Harold, Jr. already owns [141] 25 per cent, so we will pay 75 per cent for the three-fourths belonging to the estate, and the three boys would each pay one-third of that. As a result when the transaction was over Harold, Jr. owned 50 per cent, and you will

observe in that new partnership he owned half of it, and each of the other two brothers owned one-fourth. In other words, they each purchased and each paid $25,000, with the adjustment for their wives. But Harold and Ethel together owned 50 per cent, and Robert and Gloria owned 25 per cent, and John himself owned 25 per cent. So that the 25 per cent interest which Harold owned from the beginning remained his all through this mutation.

The Court: Then according to your theory, what did the brothers and their wives buy? Is it your contention that Robert and his wife put up $25,000?

Mr. Bennion: Yes, your Honor.

The Court: Which went into the estate?

Mr. Bennion: Paid it into the estate to buy assets.

The Court: And got therefor a 25 per cent interest in the new partnership?

Mr. Bennion: That's right.

The Court: And that John and his wife put up $25,000?

Mr. Bennion: John was not married, but he put up $25,000 to buy assets, and they all five joined together in a new partnership. [142]

The Court: And then did H. S. also put up $25,000 to add to the 25 per cent he already had?

Mr. Bennion: That's right. And they went from there into a new partnership.

They didn't buy any interest in a partnership. They put their capital in and formed a partnership, and the capital they put in was used to buy these contracts, these assets.

The Court: You don't have any proof in the record how this $75,000 was split up between the boys, as I recall, do you?

Mr. Bennion: It is my recollection that Harold, Jr., testified that the $75,000 when it was paid was charged proportionately on the books to the partners. That is my recollection of the thing. That is how it actually was done.

Mr. Harold S. Anderson, Jr.: That is correct.

The Court: Do you recall that in the record?

Mr. McHale: I don't recall, your Honor.

The Court: Well, we will reopen the case for that purpose. We will ask the question right [143] here.

HAROLD S. ANDERSON, JR.

recalled as a witness, having been previously sworn, testified further as follows:

The Court: Mr. Anderson, with reference to the $75,000 paid to the estate of your father, do you know how that was eventually distributed among the brothers and their wives, who actually were the ones that paid that money ultimately?

The Witness: Your Honor, the wives, Ethel Anderson, my wife, contributed her separate income, her separate property in the amount of $7500; Gloria Anderson, my brother Robert's wife, contributed her separate capital, cash capital, to the new partnership, to the extent of her interest, which I believe was $3750, representing her interest in the new partnership; I contributed my capital through my ownership in the assets or the capital that was

(Testimony of Harold S. Anderson, Jr.)
mine through my ownership in the partnership; and my brothers Jack and Bob the same way, and adjustments were made to the respective capital account showing their contribution.

The Court: In other words, as far as you were concerned, as far as the $75,000 was concerned—does Exhibit 16 show money due you?

Mr. McHale: It shows that he owed the partnership money, your Honor.

The Court: What is that?

Mr. McHale: It shows that he owed the partnership $2,083.99. [144]

The Court: I understand what you mean by the wives; was there an amount of money out of the $75,000 for which each of the brothers became liable and eventually paid, which brought the total interest of each brother, of your brother Bob, take him for instance, up to $25,000?

The Witness: Yes, sir.

The Court: And your brother John had what—twenty-five?

The Witness: Twenty-five thousand, twenty-five per cent.

The Court: Then did you in addition to the twenty-five per cent interest in the contracts, which you claimed came to you on the dissolution of the partnership, did you also put up an additional $25,000?

The Witness: To build my interest to 50 per cent, or 50 per cent less my wife's contribution. Together ours made 50 per cent.

(Testimony of Harold S. Anderson, Jr.)

The Court: So that your contention is that of the $75,000 paid to the estate, actually $25,000 of that—the burden of $25,000 of that was borne by you and your wife.

The Witness: Yes.

The Court: 25 per cent by Robert and his wife?

The Witness: Yes.

The Court: And 25 per cent by John.

The Witness: Right. [145]

The Court: Any question about that? Any cross-examination?

Cross-Examination

By Mr. McHale:

Q. Out of the $75,000 paid to the estate, you and your two brothers were entitled from the distribution of the estate to $37,500, were you not?

A. As heirs?

Q. Yes. A. Yes.

Mr. Mackay: When the estate was distributed, of course, as an heir he got his share.

The Court: I don't see that that has any significance. It is true that is the way it worked out, but what difference does that make?

Mr. McHale: I think there has always been in this case the concept of buying and selling, but I think there is this: that at least one-half of this these boys inherited as part of the estate. We haven't stressed that point, but I think your Honor can see that they do have one-half interest, they go through the elaborate arrangement whereby the

surviving partners purchase from the estate the interest, and from the estate they rebuy the interest in the partnership.

The Court: While their father was alive they had absolutely [146] no existing rights because of the fact that they were heirs, no specific rights to any property; they were merely potential heirs should he pass away, up to that time. After his death it is true they became, as heirs, entitled to a certain interest. But I can't see how that would make any difference.

Mr. McHale: I am trying to point up the fictitious nature of this entire transaction where they are taking assets which have no basis in the father's hands and trying to deduct them from future income.

Mr. Mackay: Mr. McHale, you talk about fictitious nature; when Uncle Sam collected the tax on the estate, the estate tax on the estate, the value was determined upon, and it was paid, and they as heirs got their share. It is not a fictitious deal at all.

The Court: I am going to ask you to brief this for me. I am going to ask you to pull together what you have out of your pretrial memoranda, and have in mind the evidence that has been taken. And I think you probably had better have the transcript written up, hadn't you?

Mr. McHale: I think that is essential.

The Court: Because probably whatever way this goes you will want it to go further.

Let's have your transcript written up and have briefs filed, and make them as concise as you can.

I think the trial has pointed up the problems, what was [147] bought and what was sold.

I take it both sides rest? Both sides now rest?

Mr. McHale: Defendant rests.

Mr. Bennion: Plaintiffs rest.

The Court: How long will it take you to get this transcript out, Mr. Reporter?

(Discussion had off the record.)

The Court: How much time do you want for briefs?

Mr. Bennion: I think we can get one out in 15 days.

Mr. McHale: We can get one out 15 days after it is filed.

The Court: All right. 15 and 15 after the transcript is filed. You may want a reply brief and you may not. You can decide on that later.

Mr. Bennion: We would like an opportunity to reply.

The Court: All right, 5 days for the reply brief. Then unless I order an oral argument on it, it will then stand submitted. I may want it argued.

On this matter of good will I want to make one other observation. It is pretty hard for me to see where good will is involved at all in the Anderson type of business: If I am running a peanut stand and I run it on a sidewalk corner for ten years, there are a certain number of people that know that I serve good peanuts that will stop by and buy from me. That is what I would call good will. The Anderson Brothers would have starved to death if they

operated that kind of a business. [148] Nobody dropped into their warehouse and said, "Will you furnish a bed for me, or a meal?" Their business consisted essentially of feeding and lodging contracts, using contracts in the very loose sense of the word. The essential thing involved in that type of business was, first, the know-how to conduct that kind of a business; secondly, the ability to know how to get these purchase orders through Government agencies, which I imagine involved some knack of knowing the ropes, and then getting one of these purchase orders and continuing through with it and making some money.

This particular purchase order for Basic Magnesium, it is true, gave them a certain item per man over the life of the contract, which in itself wasn't a big item, I think that ran to $10,000 more or less over the contract, but what it did in substance was to give them the right to sell meals and rent rooms on a large scale basis, and they were in substance feeding and housing a small city.

Now, if an operation is economically handled with cost controls and all, there is no reason why money couldn't be made, because there is no—I was going to say there is no limitation on costs. The prices of meals were not fixed by those purchase orders, were they?

Mr. H. S. Anderson, Jr.: No.

The Court: Some control was exercised by the company; I suppose you had to submit price [149] lists?

Mr. H. S. Anderson, Jr.: That is correct, subject to their approval.

The Court: So the Anderson Company could at all times sell meals to make a profit.

If they were going in the hole, all they had to do was go in and present an increased price list and they were still in business.

In fact, this other case that I tried demonstrated more clearly than this how that was handled. There were changes from time to time on the stated price list.

Now, what part of that is good will? It is pretty hard for me to see where any of it is good will. Unless you want to say that possible contacts which the Andersons might have had with Government agencies or with firms that they had dealt with previously, or new persons, was good will. It is certainly not the type of good will that is understood in the common meaning of the word. When I go in to buy a business and the fellow says, "I have been in business here for twenty years, I have never sold less than so much a year, people all up and down the street know I have done business right around this corner, there are people who come from miles around and don't even know my name, but know where I am located, that look me up and they know that I handle this particular type of commodity"—that prospect of new business coming in, new business coming in without having to go out [150] after it, is what I would think is good will. The Anderson business didn't come that way. You had to go out after it and get it, and then nurse

it along. So offhand it is pretty hard for me to see where there is any good will involved in the case.

Now, whether or not plaintiffs' contention is correct that they can take the amount of money that was paid and then allocate it is another question. Certainly it would be fair to make a finding that the Anderson Brothers would not have paid the $125,000 if it had not been for the subsistence deals then existing at San Luis Obispo, Camp Roberts—and what is the other one?

Mr. H. S. Anderson: Basic Magnesium, Douglas, and Calship.

The Court: I don't think there is any doubt but what a person could look at this balance sheet——

Mr. McHale: Your Honor, we have a balance sheet in that shows an interest of $71,000 of H. S. Anderson, Sr., Exhibit A.

The Court: It shows what?

Mr. McHale: An interest of $71,601.81.

The Court: As being the capital investment of H. S. Anderson?

Mr. McHale: Yes.

The Court: All right.

Mr. McHale: We say that they had undervalued on their books their equipment and their assets.

The Court: Let's assume for argument that your statement Exhibit A does show that, would you seriously argue that if there had not been the two Post Exchange deals, the Basic Magnesium, the Calship, and Douglas, that if there would have been none of this feeding or clothing operation going

on or being started, do you seriously argue that the brothers would still have paid $125,000 cash for what they did pay for?

Mr. McHale: On our balance sheet it would be a liquidated value of $71,000. We say good will is more than just the name and reputation. It is the going concern value.

I tried to point it up in my questioning of the witness, that this was definitely a going concern and as such had a value. I think economists would say good will is more than reputation. It is a going business, the earning power of an established and going business.

Accountants when they say someone purchases an interest in the business which has more value than the actual value of the assets, that additional value is almost always allocated to good will and represents that possibility of future earnings.

The Court: Well, if it wasn't a very cowardly thing to do I would just decide the case and shoot it along to the [152] Circuit, because I don't know that I am going to be able to solve this correctly.

Well, thank you for your assistance, counsel, in cutting down the trial of this case, and your courtesy in handling it.

Mr. Bennion: Thank you, your Honor. [153]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 12th day of February, A. D. 1954.

/s/ SAMUEL GOLDSTEIN,
Official Reporter.

Received February 15, 1954.

[Endorsed]: Filed June 1, 1955. [154]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 104, inclusive, contain the original

Complaint;
Answer;
Interrogatories by Defendant;
Answers to Interrogatories;
Stipulation of Facts;
Memorandum of Decision;
Stipulation;
Plaintiffs' Objections to Findings of Fact & Concls. of Law;
Findings of Fact & Conclusions of Law;

Judgment;

Notice of Appeal;

Plaintiff-Appellant's Designation of Contents of Record;

Defendant-Appellee's Counter-Designation of Contents of Record;

which, together with a full, true and correct copy of the Minutes of the Court had on September 14, 1953, January 28, 1954, January 29, 1954, June 30, 1954, and March 18, 1955; 1 volume of Reporter's Transcript of Proceedings had on January 28 & 29, 1955; and Plaintiff's exhibits 1 to 24, inclusive, and Defendant's exhibits A to X, inclusive; all in said cause,

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $5.60, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 24th day of June, 1955.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 14796. United States Court of Appeals for the Ninth Circuit. H. S. Anderson, Jr., Appellant, vs. United States of America, Appellee. Ethel H. Anderson, Appellant, vs. United States of America, Appellee. Robert W. Anderson, Appellant, vs. United States of America, Appellee. Gloria S. Anderson, Appellant, vs. United States of America, Appellee. John Hardy Anderson, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: June 25, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14796

H. S. ANDERSON, JR., et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY

Preliminary Statement

At the time of his death on December 27, 1941, H. S. Anderson, Sr., was a member of a California partnership which was engaged in the subsistence business. His death admittedly dissolved the partnership. The decedent's interest in the partnership had no book value at the time of his death, but had a fair market value of $75,000.00, the uncontradicted evidence establishing that such value was attributable to certain contracts owned by the partnership at the date of death (the principal contract being for the furnishing of subsistence to workers in connection with the building of the Basic Magnesium plant in Nevada) said contracts having a stipulated life of two years at the date of decedent's death. The five plaintiff-appellants agreed to pay the sum of $75,000.00 to the decedent's estate. They took over

the operation of said business, and out of the income therefrom they paid to decedent's estate the agreed sum of $75,000.00. Decedent was also a member of an Alaska partnership at the time of his death, and the five plaintiff-appellants purchased from his estate the decedent's interest therein for the sum of $50,000.00.

Statement of Points

The District Court erred in the following respects:

A. California Partnership.

1. In concluding as a matter of law that the purchase price ($75,000.00) should not be apportioned among the specific assets acquired.

2. In concluding as a matter of law that the sums paid (aggregating $75,000.00) are not deductible as expenses, and are not amortizable or depreciable over the two year life of the contracts (to wit, 1942 and 1943).

3. In finding as a fact that "* * * decedent had an interest in the California partnership in excess of $71,000.00, without the alleged contracts being listed as assets" at the time of his death. This error is based primarily upon the following two errors:

A. Failure of the Court to find as a fact that at the time of his death, the California partnership had a liability in favor of decedent in the amount of approximately $29,000.00,

which amount was paid to his estate in addition to the $75,000.00, and which amount was not part of the value of decedent's capital interest (which had no value) in said partnership.

B. Failure of the Court to find as a fact that whatever, if any, value decedent's interest in said partnership had at the time of death, was allocable to partnership assets was depreciated by approximately 50% (basis two-year life) between the date of death (December 27, 1941), and the date of purchase (December 12, 1942), three-fourths of which depreciation was allocable to decedent's interest.

4. In finding as a fact that various partnership subsistence contracts had no substantial value, and only a small percentage of the value to the partnership ($100,000.00) contended for by plaintiff-appellants.

5. In finding that $4,000.00 was paid for good-will or going concern value.

6. In finding that the amount of $75,000.00 was not paid to purchase specific assets.

B. Alaska Partnership.

1. The Court made the same errors with respect to $10,561.30 of the purchase price paid in connection with the Alaska partnership, that being the amount by which the purchase price of $50,000.00 exceeded the book value of decedent's interest in

said Alaska partnership at the date of his death ($39.438.70).

Dated: July 20, 1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,

/s/ ADAM Y. BENNION,

/s/ STAFFORD R. GRADY,
Counsel for Appellants.

Service of Copy acknowledged.

[Endorsed]: Filed July 22, 1955.

[Title of Court of Appeals and Cause.]

STIPULATION RE DESIGNATION, PRINTING AND USE OF RECORD

It is hereby stipulated by and between counsel for the respective parties hereto as follows:

1. The entire record, as certified to this Court by the Clerk of the United States District Court is material to the consideration of the appeal.

2. The following portions of the record as certified shall be included in the printed record:

a. Complaint in H. S. Anderson, Jr. v. United States of America (No. 12044-C Civil in the United

States District Court) filed on August 4, 1950, including all exhibits attached thereto.

b. Answer in said action filed on or about January 10, 1951.

c. Interrogatories by defendant filed in said action on December 13, 1951.

d. Answer to interrogatories filed in said action on March 10, 1952.

e. Stipulation of Facts, filed in said action on January 13, 1954.

f. Stipulation filed in said action on June 30, 1954.

g. Transcript of record of proceedings had on the 28th and 29th days of January, 1954, beginning at page 1 and ending at page 154, together with the following exhibits only: 2, 16, 17 and A.

h. Memorandum of decision filed in said action by Judge James N. Carter on June 30, 1954.

i. Findings of Fact and Conclusions of Law filed in said action by Judge James M. Carter on March 18, 1955.

j. Judgment entered in said action on March 22, 1955.

k. Notice of Appeal filed in said action on May 20, 1955.

l. Minutes of the Court of September 14, 1953; January 28, 1954; January 29, 1954; June 30, 1954; and March 18, 1955.

m. Statement of Points Upon Which Appellants Intend to Rely, dated July 20, 1955.

n. This Stipulation Re Designation, Printing and Use of Record.

3. All portions of the record as certified by the Clerk of the United States District Court which are not included in the printed record, as indicated above, may be referred to by either party in briefs or argument, the same as if said portions had been part of the printed record.

4. The record as designated herein concerning the case of H. S. Anderson, Jr. v. United States of America (No. 12044-C Civil in the United States District Court) may be used in the following companion cases with the same force and effect and to all intents and purposes as though a duplicate of said record had been designated, printed, served and filed in each of said companion cases:

1. Ethel H. Anderson v. U.S.A., No. 12045-C, Civil, U. S. District Court.
2. Robert W. Anderson v. U.S.A., No. 12046-C, Civil, U. S. District Court.
3. Gloria S. Anderson v. U.S.A., No. 12047-C, Civil, U. S. District Court.
4. John Hardy Anderson v. U.S.A., No. 12048-C, Civil.

Dated: July 20, 1955.

MACKAY, McGREGOR,
REYNOLDS & BENNION,

By /s/ A. CALDER MACKAY,

/s/ ADAM Y. BENNION,

/s/ STAFFORD R. GRADY,
Counsel for Appellants.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant United States Attorney,

/s/ EDWARD R. McHALE,
Counsel for Appellee.

[Endorsed]: Filed July 22, 1955.